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In the Supreme Court of the United States

OCTOBER TERM, 1955

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT AGAINST THE STATE OF LOUISIANA, AND BRIEF IN SUPPORT OF OPPOSITION.

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No. 15 Original

In the Supreme Court of the United States

OCTOBER TERM, 1955

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT AGAINST THE STATE OF LOUISIANA.

Now comes the State of Louisiana, through its Attorney General, and without waiving its right to object to the jurisdiction of this court, files this its opposition to Plaintiff's motion for leave to file its complaint against the State of Louisiana, and for cause of opposition shows:

1.

Congress has conferred on the District Courts of the United States concurrent jurisdiction with the Supreme Court of the United States in cases where a State is a party thereto.

U.S. Const. Art. III, Sec. 2, 28 USC 1251 (b) (2), 62 Stat 927, 28 USC 1331, 1345

Ames v. *Kansas*, 111 US 449, 469-71, 28 L.Ed. 482, 490

State of Minn. v. *U.S.*, 125 F.2d 636

U.S. v. *Montana*, 134 F.2d, 194

State of California v. *U.S.*, 91 F.Supp. 722.

2.

The exercise of original Jurisdiction by this Court is not mandatory and the Court may withhold such jurisdiction where another appropriate forum exists.

Georgia v. *Penn. R.R. Co.*, 324 US 439, 464-465, 89 L.Ed. 1051, 1066, 1067.

Mass. v. *Missouri*, 308 US 1, 19, 84 L.Ed. 3, 10.

California v. *So. Pac. Ry. Co.*, 157 US 229, 261, 39 L.Ed. 683, 695.

3.

Questions raised in this proposed proceeding regarding the boundaries of the State of Louisiana in the Gulf of Mexico involve numerous questions of fact concerning which this Court will not take judicial notice. Such matters of fact, and appropriate questions of law relating thereto, can best be determined through appellate procedure, and cannot be conveniently and fully presented in an original proceeding in this Court.

Georgia v. *Penn. R.R. Co.*, 324 US 439, 465, 89 L.Ed. 1051, 1067.

4.

A proper presentation of Louisiana's defenses and claims in this proposed cause will involve introduction in evidence of foreign treaties and documents, and of numerous maps, charts, and diagrams, records of the State Land Office, The Department of Conservation, and other State offices, which the Court will not judicially notice and the testimony of local witnesses. The transportation of such evidence and witnesses to Washington, D. C., would be a matter of great expense and inconvenience to the State of Louisiana and would be wholly impracticable and burdensome. In the interest of justice and public convenience the State of Louisiana is entitled to trial in a District Court of the United States having jurisdiction in the State of Louisiana and located therein.

Georgia v. *Penn R. R.*, supra

5.

Plaintiff seeks a trial of the dispute between the United States and the State of Louisiana in piecemeal fashion and a solution of the issues presented in the complaint would not dispose of the controversy between the parties. The complaint seeks a decree for the only purpose of determining the width of the marginal belt owned by Louisiana seaward in the Gulf of Mexico by virtue of the Submerged Lands Act of May 22, 1953, 67 Stat. 29, 43 USC 1301, et seq. Such a determination would

be utterly ineffectual without a determination of the location of Louisiana's coast line, or the landward boundary of the marginal belt, which determination is a basic issue in the controversy.

The State of Louisiana submits herewith its brief in support of this opposition. It respectfully urges and submits that this matter be fixed for oral argument; that this opposition be sustained and the relief prayed for by the plaintiff be denied.

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February, 1956

No. 15 Original

In the Supreme Court of the United States

OCTOBER TERM, 1955

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

BRIEF IN SUPPORT OF OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT AGAINST THE STATE OF LOUISIANA

Without waiving its right to object to the jurisdiction of this court, the State of Louisiana opposes plaintiff's motion for leave to file the proposed complaint in this Court for the reasons stated in the opposition which precedes this brief. Those reasons will be discussed hereinbelow.

I. DISTRICT COURTS OF THE UNITED STATES HAVE BEEN GRANTED CONCURRENT JURISDICTION BY CONGRESS IN CONTROVERSIES BETWEEN THE FEDERAL GOVERNMENT AND A STATE.

If it should be found that Congress has the power to authorize a suit by the United States against any of the member states of the Union,

then Congress has exercised such authority by providing that the District Courts shall have concurrent jurisdiction with the Supreme Court of the United States in such cases.

Article 3, Section 2 of the United States Constitution extends the judicial power to all cases arising under the Constitution, the laws of the United States, and treaties made under their authority. It confers upon the Supreme Court original, but not exclusive, jurisdiction to those cases in which a State shall be a party.

Section 1345 of Title 28 of the United States Code gives to the District Courts of the United States original jurisdiction in those cases where the United States is a plaintiff. This Section of the Judicial Code reads as follows:

> "§ 1345. *United States as plaintiff*
> Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress. June 25, 1948, c. 646, 622 stat. 933."

Section 1251 (b) (2) of Title 28 of the United States Code grants to this Court original, but not exclusive, jurisdiction of controversies between the United States and a state. This section of the Judicial Code reads:

"§ 1251. *Original jurisdiction*

(b) The Supreme Court shall have original but not exclusive jurisdiction of:

(2) All controversies between the United States and a State."

Louisiana does not admit that it can be sued by the United States and asserts that, in any event, it cannot be sued by the United States without its consent; but if so sued, with or without its consent, then the venue of such an action can be laid either in this court, or in the United States District Court for the Eastern District of Louisiana.

This Court has recognized the power of Congress to grant to the inferior Courts of the United States jurisdiction in cases where the Supreme Court has been vested by the Constitution with original jurisdiction.[1] This principle has also been approved in other cases decided by the Courts of Appeal and the District Courts of the United States.[2]

II. THIS COURT MAY DENY JURISDICTION WHERE ANOTHER APPROPRIATE FORUM EXISTS.

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[1] *Ames* v. *Kansas*, 111 US 449, 469, 28 L.Ed. 482, 490; *U. S.* v. *Bank of N. Y. & Trust Co.*, 296 US 463, 479, 80 L.Ed. 331, 339; *U. S.* v. *California*, 297 US 175, 187, 80 L.Ed. 567, 574; *Case* v. *Bowles*, 327 US 92, 97, 90 L.Ed. 552, 557.

[2] *State of Minn.* v. *U. S.*, 125 F. 2d 636; *U. S.* v. *Montana*, 134 F. 2d 194; *State of California* v. *U. S.*, 91 F. Supp. 722.

In the case of *Georgia* v. *Pennsylvania R. R. Co.*, 324 US 439, 464, 89 L.Ed. 1051, 1067 this Court stated that Clause 2 of Section 2, Article III of the United States Constitution does not grant exclusive jurisdiction to this Court in the cases enumerated by it and that the exercise of that jurisdiction is not mandatory but may be withheld where another suitable forum exists. We quote from the decision in that case:

> "The Court in its discretion has withheld the exercise of its jurisdiction where there has been no want of another suitable forum to which the cause may be remitted in the interest of convenience, efficiency, and justice. *Georgia* v. *Chattanooga*, 264 US 472, 68 L.Ed 796, 44 S.Ct. 369, and *Massachusetts* v. *Missouri*, both supra." [3]

As will be hereinafter shown the interests of convenience, efficiency, and justice would require that this case be tried in a District Court of the United States and in the State of Louisiana.

III. THIS CASE INVOLVES NUMEROUS QUESTIONS OF FACT WHICH SHOULD BE DETERMINED THROUGH APPELLATE PROCEDURE.

Plaintiff's brief, page 15, makes the statement that the United States believes that this case will not require the taking of any evidence, but involves

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[3] See also *Massachusetts* v. *Missouri*, 308 US 1, 19 84 L.Ed. 3, 10; *California* v. *So. Pacific R. R. Co.*, 157 US 229, 261, 39 L.Ed. 683, 695.

only questions of law and matters of which the Court will take judicial notice. We take issue with this statement because the State of Louisiana desires to present and must present numerous questions of fact regarding the location of its boundaries in the Gulf of Mexico and this Court will not take judicial notice of these facts. The proposed action involves questions relating to the historic boundaries of the State of Louisiana, and a determination of these historic boundaries will require reference not only to treaties made with the United States which this Court will judicially notice, but foreign treaties and documents located in the archives of England, France and Spain which this Court will not judicially notice. Louisiana was successively under the domination of France and Spain before it was ceded to the United States by the Treaty of Paris in 1803. This Treaty of cession known as the Louisiana Purchase describes the territory of Louisiana as a territory located within the limits which it possessed in the hands of Spain, and that it had when France possessed it. The State of Louisiana desires to make proof by foreign documents, maps and treaties of the limits of the territory of Louisiana which the Treaty between the United States and France, signed at Paris, April 30, 1803, obligated the United States to incorporate as states of the Union.

Again referring to the case of *Georgia* v. *Penn. R. R. Co.*, (Supra), we call attention to that portion of the decision which states that it would be wholly appropriate that the issues tendered in a case of this kind should be tried in a United States District Court where facilities are better adapted to an extended trial of issues of fact. In this connection we desire to quote the following paragraphs of the opinion: [4]

> "There is some suggestion that the issues tendered by the bill of complaint present questions which a district court is quite competent to decide. It is pointed out that the remedy is one normally pursued in the district courts whose facilities and prescribed judicial duties are better adapted to the extended trial of issues of fact than are those of this Court. And it is said that no reason appears why the present suit may not conveniently proceed in the district court of the proper venue or why the convenience of the parties and witnesses, as well as of the courts, would be better served by a trial before a master appointed by this Court than by a trial in a district court with the customary appellate review. The suggestion is that we deny the motion for leave to file without prejudice to the maintenance of the suit in an appropriate district court. See *Massachusetts* v. *Missouri*, supra (308 US pp. 17, 18, 84 L.ed. 9, 10, 60 S.Ct. 39).

[4] 324 US 465, 89 L.Ed. 1067.

> "There is, however, a reason why we should not follow that procedure here though in other respects we assume it would be wholly appropriate."***

The reason why this Court exercised its original jurisdiction in the foregoing case was that the plaintiff could not have obtained relief in the District Courts because it could not have secured jurisdiction over a number of the defendants, and in any event could not have found all of the defendants in any one of the judicial districts of Georgia. No such problem exists here.

A general statement of Louisiana's claims to submerged lands in the Gulf of Mexico will suffice to show that the taking of evidence is necessary and desirable, not only to prove the width of the marginal belt claimed and owned by the State, but to demonstrate also the landward and seaward location of the lines which delineate this belt. The statements which follow are not intended to furnish a complete and detailed argument on this subject, since the merits of this case are not before the Court at this time. We will only attempt to outline some of the defenses that involve oral evidence and documentary proof of which the Court will not take judicial notice.

Louisiana's case, among other things, involves an interpretation and application of the provisions of the Treaty of Paris between France and the

United States in 1803 whereby the territory of Louisiana was ceded to the United States. To properly interpret this treaty recourse must be had to certain prior treaties between France and Spain; i.e., the Treaty of St. Ildefonso dated September 15, 1800 and the Treaty of Fontainebleu dated November 3, 1762. These treaties and various proclamations and edicts of the Kings of France and Spain furnish evidence concerning the historic boundaries of Louisiana and must be considered in interpreting the Act of Congress creating the Territory of Orleans,[5] and the Acts of Congress admitting the State of Louisiana into the Union.[6]

The Acts of Congress creating the Territory of Orleans, and thereafter forming this territory into the State of Louisiana, were undoubtedly passed for the purpose of carrying out the obligations of the United States assumed in the Treaty of Paris whereby this territory was acquired from France. The first Article of this treaty reads, in part:[7]

> "... The French Republic ... doth hereby cede to the said United States, in the name of the French Republic, for ever and in full sovereignty, the said territory, *with all its*

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[5] 2 Stat. 283 approved March 26, 1804.

[6] 2 Stat. 701, 708 approved April 8, 1812.
2 Stat. 708 approved April 14, 1812.

[7] La. Hist. Quarterly Vol. 2 No. 2, April 1919 page 139-140.

> *rights and appurtenances*, as fully and in the same manner as they had been acquired by the French Republic." (Emphasis supplied.)

This paragraph in the Treaty of Paris is prefaced by a recital taken from the Treaty of St. Ildefonso of September 15, 1800 which is also quoted, in part:

> "His Catholic Majesty (Spain) promises and engages, on his part, to retrocede to the French Republic— . . . . the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it; and such as it should be after the treaties subsequently entered into between Spain and other States."

Article 3 of the Treaty of Paris concerning the cession of the Louisiana territory to the United States, provides:

> "The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion they profess."

The Articles of the Louisiana cession thus obligate the United States to incorporate Louisiana

into the Union according to the principles of the Federal Constitution, and to maintain the inhabitants of Louisiana in their property in the territory *with all its rights and appurtenances* in the same manner as they had been acquired by the French Republic, and to the same extent as when this territory was in the hands of Spain, and that it had when France possessed it. In other words, the United States agreed that the people of Louisiana would be guaranteed in their ownership of the territory within its historic boundaries when the State should be formed and admitted to the Union. It is therefore important to determine the extent of the Louisiana territory and its boundaries when it was successively occupied by Spain and France. We are here concerned, of course, with only that portion of the territory of Louisiana bordering on and in the Gulf of Mexico, which was incorporated into the State of Louisiana. A determination of these historic boundaries is one of the requirements of the Submerged Lands Act. Section 4 of the Act (43 USC 1312) provides:

> ". . . . Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress. May 22, 1953, c. 65, Title II, § 4, 67 Stat. 31."

The purpose of the Submerged Lands Act is thus stated by the Reports of Congressional Committees which approved H.R. 4198:[8]

"PURPOSE OF LEGISLATION

H.R. 4198 consists of three titles. Title I contains the definitions of various terms used in the bill. Title II deals with the rights and claims by the States to the lands and resources beneath navigable waters within their historic boundaries and provides for their development by the States. Title III (See Analysis of Title III, post) deals with the seabed and resources therein of the outer Continental Shelf beyond State boundaries and claim jurisdiction and control for the Unites States. It authorizes leasing by the Secretary of the Interior in accordance with certain specified terms and conditions."

Oral and documentary evidence are required also in order to interpret the Acts of Congress admitting Louisiana into the Union.[9] The Act of April 8, 1812 which delineates the portions of the boundary in dispute here reads in part as follows:

". . . . Beginning at the mouth of the River Sabine; thence by a line to be drawn along the middle of said river, including all islands, to the thirty-second degree of latitude; thence due north to the northernmost part of the

[8] US Code Congressional and Administrative News, 83rd Congress, 1st Sess. 1953 pages 1387 and 1399.

[9] Act of Congress approved April 8, 1812, 2 Stat 701; Act of Congress approved April 14, 1812, 2 Stat 708.

thirty-third degree of north latitude; thence along the said parallel of latitude to the River Mississippi; thence down the said river to the River Iberville; and from thence along the middle of the said river and Lakes Maurepas and Pontchartrain to the Gulf of Mexico; thence bounded by the said gulf to the place of beginning, including all islands within three leagues of the coast."

The United States contends that the words "bounded by the said Gulf including all islands within three leagues of the Coast" mean that Louisiana's southern boundary is a land boundary and that its dominion stopped at the *shore line* of the Gulf of Mexico. The State of Louisiana insists that its southern boundary is a water boundary that extends at least three leagues seaward from its *coast line*. It was so interpreted by this Court in the case of *Louisiana* v. *Mississippi*, 202 US 1, 50 L.ed. 913, and is so drawn on the diagrams which are made part of the court's decision in that case.

If this Court should now find that the words of the Act describing the limits of Louisiana do not plainly indicate that the seaward boundary of the State extends three leagues from its coast line into the Gulf, then such a description will be implied. Unless otherwise declared by Congress, the title to every species of property owned by a territory passes to a State on its admission into the Union.[10]

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[10] *Brown* v. *Grant*, 116 US 207, 212, 29 L.ed. 598, 600.

The United States does not, and cannot, hold property, as a monarch may, for private or for personal purposes.[11]

The Territory of Orleans, that part of the Louisiana Purchase which became the State of Louisiana, included all submerged lands and waters extending into the Gulf of Mexico that had previously been under the claim and dominion of France and Spain. The United States acquired this territory from France, *in trust*, for the inhabitants of the territory and for the State to be formed out of the property thus ceded by France.[12] This obligation of trust is expressly stipulated in Article 3 of the Treaty of Paris whereby the territory of Louisiana was ceded by France to the United States.[13] In a proper action Louisiana will present documentary proof to show that during the 18th century France and Spain, without protest from other powers, and with the consent of Great Britain, held dominion over the Continental Shelf of Louisiana extending seaward for ten to forty leagues. These facts will be shown by evi-

[11] *Van Brocklin* v. *Anderson*, 117 US 151, 169, 29 L.ed. 845, 851.

[12] *New Orleans* v. *US*, 10 Pet. 662, 737, 9 L.ed. 573, 602; *Pollard* v. *Hagan*, 3 How. 212, 11 L.ed. 566; *Goodtitle* v. *Kibbe*, 9 How. 471, 13 L.ed. 220; *Doe* v. *Beebe*, 13 How. 25, 14 L.ed. 35; *Barney* v. *Keokuk*, 94 US 324, 24 L.ed. 224; *Van Brocklin* v. *Anderson*, 117 US 151, 168, 29 L.ed. 845, 851.

[13] La. Historical Quarterly, Vol. 2, No. 2, April 1919, p. 140.

dence which, in part, will not be judicially noticed by the Court.

As early as 1763 Great Britain, France and Spain, who then possessed the entire North American Continent, agreed that three leagues was a reasonable measure of the width of Territorial waters. A treaty between these three powers signed at Paris on February 10, 1763 stipulated such a limit for Britain's territorial waters off Nova Scotia and New Foundland.[14] The thirteen colonies of the United States thought that three leagues was a reasonable claim to adjoining seas because the Continental Congress instructed its negotiators with Great Britain, prior to the Treaty of Independence of September 3, 1783, to require recognition of American fishing rights in the American Seas "excepting within the distance of three leagues of the shores of the territory remaining to Great Britain at the close of the war."[15]

In 1790 Spain and England agreed to a ten league territorial limit off-shore for Spain's possessions in the South Seas (Gulf of Mexico and Caribbean Sea) and South America, and a like boundary for England's possessions in North America. This latter agreement was in the form of a treaty

[14] Journal House of Commons 18 March 1763 p. 589.

[15] Journal of the Continental Congress Vols. 13 & 14; Letter of John Quincy Adams to Robert R. Livingston dated Feb. 5, 1783; Riesenfeld, "Protection of Coastal Fisheries", p. 136.

signed at Escurial on October 28, 1790—just ten years before Spain ceded Louisiana to France in the Treaty of St. Ildefonso.[16] So when Spain possessed Louisiana its boundaries extended ten leagues seaward into the Gulf of Mexico and its right to do so was never questioned by any nation. France had then surrendered all her possessions in North America, and neither France nor any other nation protested the establishment of this ten-league boundary in the American seas.

During the time that France possessed Louisiana her boundaries extended beyond ten leagues into the Gulf and included the entire Continental Shelf. LaSalle in his Proclamation of April 9, 1682 took possession of the country of Louisiana in the name of France with its *Secs*, ports and bays as far as the mouth of the Mississippi in the Gulf of Mexico to the 27th degree of latitude. This parallel of latitude extends some forty leagues seaward into the Gulf. This proclamation was made by Notarial Act and read with great ceremony in the presence of French Troops and a great host of Indian tribes. It reads, in part:[17]

> "In the name of the Most High, Mighty, Invincible and Victorious Prince, Louis the

[16] Convention between His Britannic Majesty and the King of Spain—Government Pamphlet #1799 Bodleian Library, Oxford, England.

[17] Manuscript of Notarial Proclamation of LaSalle, Dept. of Marine Archives of Paris.

> Great, by the Power of God, King of France and Navarre, 14th of that name, this the 9th day of April, one thousand six hundred and eighty-two, I, by virtue of the commission of his Majesty, which I hold in my hand and which may be seen by all whom it may concern, have taken and do now take possession of this country of Louisiana, the seas, ports, bays, adjacent straits, and all the nations, peoples, provinces, c i t i e s, towns, villages, mines, minerals, fisheries, streams, and rivers, comprised in the extent of said Louisiana,*** as also along the River Colbert, or Mississippi and rivers which discharge therein—as far as its mouth in (dans) the sea or Gulf of Mexico about the 27th degree of the elevation of the North Pole, and also to the mouth of the River of Palms;"*** (Parenthesis added)

LaSalle's claim to the 27th degree of latitude was not made in error. At that time explorers and navigators could make accurate measurements in latitude by the simple use of the quadrant although the determination of longitude was more difficult. LaSalle's claims were recognized by the American Department of State as being "certain, authentic and particular."[18]

Louisiana's historic boundaries therefore were forty leagues into the Gulf "when France possessed it" and at least ten leagues seaward "in the hands of Spain", and the Treaty between France

[18] Am. State Papers Vol. IV p. 468–70.

and the United States signed at Paris, April 30, 1803 for the Louisiana Purchase obligated the United States to incorporate this territory in the State to be formed.

Although in later years, and for certain purposes only, the United States and Great Britain have championed the claim that territorial waters extend only three miles seaward, they have not consistently followed such a rule. From time to time they have in various respects made exceptions and agreed to a broader extent of territorial seas.[19]

In the treaty between the United States and Spain made on February 22, 1819 and ratified February 19, 1821 (8 Stat. 252) the boundary of the United States in the Gulf of Mexico was described as beginning "at the mouth of the River Sabine, in the sea". Again the United States and Mexico concluded a treaty on January 12, 1828 wherein the dividing limits of the respective countries were declared to be the same as those fixed by the treaty of 1819. (8 Stat. 372).

Later events show that this southwest corner of Louisiana was intended to be located *three leagues in the sea.* This Court in *United States* v. *Texas*, 162 US 1, 40 L.Ed 867 makes reference to these

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[19] *Church* v. *Hubbart*, 2 Cranch 187, 234–5, 2 L.ed. 249, 265; Riesenfeld "Protection of Coastal Fisheries Under International Law" pages 131–136, 260; Colombos, "International Law of the Sea" p. 103.

treaties in connection with the boundaries of Texas, 3 leagues at sea.

The United States Senate, on March 1, 1837, adopted a resolution recognizing the independence of Texas. This resolution was offered by Senator Walker of Mississippi. During the final debate on the resolution immediately prior to its adoption, Senator Walker acquainted the Senate with the boundaries of Texas by reading on the floor of the Senate the boundary act of December 19, 1836.[20]

Article 5 of the Treaty of Guadalupe Hidalgo (1848), which relates to the boundary line between the United States and Mexico, reads in part as follows:

"The boundary line between the two Re-

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[20] In a speech in a secret session of the Senate on the treaty for the annexation of Texas to the United States, on May 21, 1844, Mr. Walker refers to the resolution adopted on March 2, 1837, saying: "As the author of the resolution, before it was adopted, I read to the Senate the boundaries of Texas, as described in her organic law, *claiming it also as the ancient boundaries of Louisiana;* and, with the full knowledge of these facts, the resolution was adopted. In our subsequent treaties, and those of Great Britain, France, and Holland, she is described as 'the republic of Texas' and her independence fully recognized. If, then, as contended by the senator from Missouri, the mere name (the republic of Texas) in a treaty adopts the boundaries described in her organic law, not only have we recognized the Del Norte as the rightful boundary of Texas, but also have Great Britain, France, and Holland." (Emphasis supplied). (Appendix to the Cong. Globe, 28th Cong. 1st Sess. 549.)

publics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande . . . " [21]

A further acknowledgment by the United States of the three league boundary in the Gulf is found in the Gadsden Treaty, concluded between the United States and Mexico, December 30, 1853.[22] Article I of this treaty provides that:

" . . . the limits between the two Republics shall be as follows: Beginning in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, as provided in the fifth article of the treaty of Gaudalupe Hidalgo. . . . "

and for the demarcation of this boundary by a joint commission of both countries.

This three league line was actually surveyed again and agreed upon as the international boundary between the United States and Mexico in 1911.

The Submerged Lands Act itself recognizes the fact that a different rule exists with reference to States bordering the Gulf Coast from that which exists in the case of States bordering the Atlantic and Pacific Oceans. It confirms the claims of states on the Gulf coast to a limit of three leagues from the coast whereas it restricts the States on the two

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[21] 9 Stat. 922–23.

[22] Cong. Globe, 33rd Cong. 1st Sess. 1568.

oceans to territorial waters extending only three miles seaward. The Legislative history of the Submerged Lands Act contains the following statement in the Congressional Committee Report:

> "In 1868 Congress approved the Constitution of Florida, in which its boundaries were defined as extending three marine leagues seaward and a like distance into the Gulf of Mexico. Texas' boundary was fixed three marine leagues into the Gulf of Mexico at the time it was admitted to the Union in 1845 by the annexation agreement." [23]

The Committee Report just quoted then proceeds to describe the boundaries which were fixed for other States bordering the Pacific and Atlantic Oceans as extending three miles from the coast.

There are a number of reasons why a different rule for the Gulf of Mexico exists. As stated by Chief Justice Marshall [24]:

> "In different seas and on different coasts, a wider or more contracted range, in which to exercise the vigilance of the government, will be assented to."

The Continental shelf in the Gulf of Mexico is broad and extensive, and the water depth along its coast is quite shallow. In fact, along the greater

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[23] U. S. Code Congressional & Administrative News 83rd Congress First Session 1953 Vol. 2 p. 1516.

[24] *Church* v. *Hubbart*, 2 Cranch 187, 235, 2 L.ed. 249, 265; Colombos "International Law of the Sea" p. 39.

part of Louisiana's coast the three fathom contour extends twelve to fifteen miles seaward. Broad and extensive shoals from four to five fathoms in depth extend even further seaward. Prior to the construction of the Panama Canal only a small portion of the world's commerce traversed its limits. With few exceptions warships and large ocean going vessels have never been able to approach as close as three leagues from shore except at the entrances to its harbors and ports. The fact that the Gulf is almost completely surrounded by land with the West Indies and Bahamas stretching across its relatively narrow entrance, differentiates it from the open seas.

Since the three-league boundary in the Gulf of Mexico has always been recognized by the United States in the Gulf of Mexico around practically the entire perimeter of his land-locked body of water, Louisiana is, under the Constitution, entitled to equality of treatment with the other Gulf Coast States:

In the Texas Tidelands Decision this Court said [25]:

> "The 'equal footing' clause prevents extension of the sovereignty of a State into a domain of political and sovereign power of the United States from which other States

[25] *United States* v. *Texas*, 339 US 707, 719–720, 94 L.ed. 1221, 1228.

have been excluded, just as it prevents a contraction of sovereignty (*Pollard's Lessee* v. *Hagan* (US) 3 How. 212, 11 L.ed. 565, (Supra) which would produce inequality among the States. For equality of States means that they are not 'lesser, greater, or different in dignity or power.' See *Coyle* v. *Smith* 221 US 559, 566, 55 L.Ed. 853, 857, 31 S.Ct. 688."

There is an abundance of evidence in the Congressional Record to show that the United States has always believed that the States own their territorial waters and submerged lands in the sea adjacent to their coasts, even without any express grant, under the concept of state sovereignty and the "equal footing" doctrine.[26] This Court in the California Tidelands Case affirmed the fact that the Courts had been of that same opinion, at least since *Pollard* v. *Hagan* [27] was decided in 1844. In the California Case your Honors said: [28]

"As previously stated this Court has fol-

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[26] A majority of the members of Congress in 1946 and 1948 expressed the same understanding. See the wording of H. J. Res. 225, 79th Cong., 2nd Sess. (1946); 92 Cong. Rec. 1942, 10316 (1946) confirming titles to the States, which was vetoed by the President. 92 Cong. Rec. 10660 (1946). Also see S. 1545, 81st Cong., authored by 31 Senators for the same purpose and containing the same interpretation; and H.R. 5992, 80th Cong., which passed the House by a vote of 257 to 29. 94 Cong. Rec. 5155 (1948).

[27] *Pollard* v. *Hagan*, 3 How. 212, 11 L.ed. 565.

[28] *U.S.* v. *California*, 332 US 19, 36, 91 L.ed. 1889, 1898.

lowed and reasserted the basic doctrine of the Pollard case many times. And in doing so it has used language strong enough to indicate that the Court then believed that states not only owned tidelands and soil under navigable inland waters, but also owned soils under all navigable waters within their territorial jurisdiction, whether inland or not . . . "

As a matter of law, a recognition of Louisiana's title to the three-league belt should be implied. As a matter of fact, it can be proven as a result of custom and usage over a long period of time.[29]

Louisiana since her admission into the Union has at all times, and with the acquiescence of the United States, exercised governmental and proprietary rights in its Continental shelf. Evidence on this subject will be offered by the State in the form of numerous maps, charts, records of the State Land Office, State Department of Conservation, State Mineral Board, and by the records of other State offices, and by the oral testimony of witnesses. These are facts which require a hearing before a trial court where pretrial procedures, and other trial procedures, will facilitate an orderly hearing and a full presentation of facts.

There are many equities involved in this con-

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[29] *U.S.* v. *Texas*, 162 US 1, 61, 40 L.ed. 867, 892; *Mass.* v. *N. Y.*, 271 US 65, 95–6, 70 L.ed. 838, 848–851; *Martin's Lessee* v. *Waddell*, 16 Pet. 367, 410–417, 10 L.ed. 997.

troversy, and of course the United States is subject to the same rules of justice and equity which are applicable to other litigants.[30] In this connection the Congressional Committee Report, recommending passage of the Submerged Lands Act, says:[31]

> "The repeated assertions by our highest Court for a period of more than a century of the doctrine of State ownership of all navigable waters, whether inland or not, and the universal belief that such was the settled law, have for all practical purposes established a principle which the committee believes should as a matter of policy be recognized and confirmed by Congress as a rule of property law.
>
> The evidence shows that the States have in good faith always treated these lands as their property in their sovereign capacities; that the States and their grantees have invested large sums of money in such lands; that the states have received, and anticipate receiving large income from the use thereof, and from taxes thereon; that the bonded indebtedness,

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[30] *Guaranty Trust Co.* v. *U.S.*, 304 US 126, 82 L.ed. 1224 and cases cited; *Richardson* v. *Fajardo Sugar Co.*, 241 US 44, 60 L.ed. 879; *People of Porto Rico* v. *Ramos*, 232 US 627, 58 L.ed. 763; *Clark* v. *Barnard*, 108 US 436, 447, 448, 27 L.ed. 780; *U. S.* v. *Nat'l City Bank*, 83 F.2d 236, 238, Cert. Den. 299 US 563, 81 L.ed. 414; *Jones* v. *Watts*, 142 F.2d 575.

[31] U. S. Code Congressional and Administrative News, 83rd Congress, 1st Sess. 1953 Vol. 2 p. 1429-30.

school funds, and tax structures of several States are largely dependent upon State ownership of these lands; and that the legislative, executive, and judicial branches of the Federal Government have always considered and acted upon the belief that these lands were the properties of the sovereign States.

If these same facts were involved in a dispute between private individuals, an equitable title to the lands would result in favor of the person in possession. The Court in the California case states, as a matter of law, that the Federal Government—

'is not to be deprived of those interests by the ordinary court rules designed particularly for private disputes over individually owned pieces of property; ***'

That effect of this ruling of the Court is to place the State of California in the same legal position as an individual, thereby depriving it of its status as a sovereign. It should be noted that the case of *U. S.* v. *California* was a controversy between two sovereigns, namely, the United States on the one hand and the State of California on the other, both of which occupied equal dignity as sovereigns. The sovereign rights enjoyed by the United States were in the first instance derived from the States and the sovereign powers of the United States can rise no higher or have any greater effect than that which was delegated to the Central Government by the Constitution. The committee believes that, as a matter of policy

in this instance, the same equitable principles and high standards that apply between individuals, should be applied by Congress as between the National Government and the sovereign States. (See *Indiana* v. *Kentucky*, 136 US 479, 500, 10 S.Ct. 1051 (1890); *U.S.* v. *Texas*, 162 US 1, 61, 16 S.Ct. 725 (1896); *New Mexico* v. *Texas*, 275 US 279, 48 S.Ct. 126 (1927).)"

The equities involved here relate to the long continued exercise of jurisdiction and ownership by Louisiana over the waters and the submerged lands in the Gulf, the recognition by the various departments of the Federal Government of Louisiana's ownership and title, and the acquiescence not only of the United States but of other nations in this dominion and title of the State. The acts of United States administrative and executive officials in recognizing Louisiana's title is certainly evidence to explain and interpret the original intent of the Federal and State governments in describing Louisiana's boundaries in the Act of Congress incorporating the Territory of Orleans into the State of Louisiana.[32] Louisiana is entitled to offer evidence, oral and documentary on this subject.

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[32] *Mass.* v. *N. Y.*, 271 US 65, 95, 96, 70 L.ed. 838, 848–851; *Martin's Lessee* v. *Waddell*, 16 Pet. 410, 10 L.ed. 1012; *Handly* v. *Anthony*, 5 Wheat. 374, 383, 384, 5 L.ed. 113, 115.

Paragraph IX of the Government's complaint states that the fundamental issues involved in its controversy with Louisiana "involves inquiry into and application of the foreign policy of the United States in a mater of peculiar importance and delicacy" over which the original jurisdiction of this Court is most appropriate. This is wishful thinking on the part of counsel for plaintiff in a supreme effort to dress up the Government's appearance and evade an essential issue. As a matter of fact, Plaintiff appears here not to champion or protect or defend foreign policy, but to seek unjust enrichment, through personal and material proprietorship, at the expense of one of the sovereign states. The United States is claiming the ownership of valuable oil lands belonging to Louisiana and discovered through her own initiative and industry,—not to protect interstate and foreign commerce—not to defend Louisiana or the nation from a foreign foe—nor for any other governmental purpose. It merely seeks to establish a private claim of ownership in lands so that it may go into the business of selling leases and mineral rights and securing royalties on oil, gas, and other minerals. It possesses here no greater stature than any other private land owner or oil company. The mere fact that the United States may be called upon in time of war to defend and protect Louisiana's oil and gas wells in its territorial waters and submerged lands adds nothing to the government's

rights, purposes, or obligations now. In time of war the Federal Government must defend the harbors and port facilities of New York, New Orleans and San Francisco and it must defend and protect the gold and silver mines of Colorado, the oil fields of Oklahoma, Illinois, Texas and California, the lead mines of Missouri and the coal mines of Pennsylvania and West Virginia. But the sovereign obligation to defend the properties of the States and people confers no title of ownership of those properties in the United States.

The statement in Article IX of the proffered complaint that the fundamental question at issue "involves inquiry into and application of the foreign policy of the United States in a matter of peculiar importance and delicacy" can only be taken as a frivolous argument. What repercussions could be expected on the International scene over Louisiana's claim to a three-league boundary in the Gulf, when the claim of the United States to the entire continental shelf has not been protested by any nation since the claim was asserted by Proclamation of President Truman on September 28, 1945?[33] The people of Louisiana have been exercising an exclusive right to fish, trawl, and

[33] 10 F.R. 12303–4 US Code Cong. Service 1945 p. 1199, 1200 Executive Order #9633, 3CFR, 1945 Supp., accompanying this proclamation states that it shall not prejudice any issues between the United States and the several states, relating to the ownership or control of the subsoil and seabed on the Continental Shelf.

seine the waters of the Gulf off shore since the State was admitted to the Union, and the State has by Legislative Act, at least as early as 1870,[34] forbade aliens to fish or to remove oysters and shells from her territorial waters in the Gulf on penalty of fine and imprisonment. That was 86 years ago, but no international complications have resulted therefrom. Since 1915 the Legislature of Louisiana has authorized the leasing of its public lands, including lands underlying the Gulf of Mexico, for the exploitation of petroleum, gas and other mineral deposits.[35] No delicate question of national policy has yet arisen on this subject. Numerous oil and gas wells have already been drilled by lessees of the State up to and exceeding three leagues off shore without protest or controversy except the present one between the State and the Federal Government.

Furthermore, pursuant to the Outer Continental Shelf Lands Act of Congress,[36] the Federal Government has for several years been leasing lands far out to sea on Louisiana's continental shelf, and drilling operations have been, and are being conducted there. Why then should plaintiff say that Louisiana's exercise of proprietorship and domin-

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[34] Act No. 18 of 1870 of the Acts of Louisiana.

[35] Complaint, Art. IV, *United States vs. La.* #12 original U.S. Sup. Ct. Oct. Term 1949. Act 30 of 1912 of the Acts of La.

[36] Act of August 7, 1953, 67 Stat 462, 43 USC 1331.

ion closer to the shores raises delicate questions of foreign policy? The argument is inconsistent, and is without merit. Obviously no question of foreign policy is involved so as to necessitate the exercise of original jurisdiction by this Court.

If there be any principle of sovereignty involved in the Federal Government's claims let it be noted that Louisiana is also sovereign within its boundaries on land and sea.

The boundaries between the respective power and immunity of State and National Government are drawn so as to reserve to each government, within its own sphere, the freedom to carry on those affairs committed to it by the Constitution without undue interference by the other.[37] Powers of the general Government and of the State, although both exist and are exercised within the same territorial limits, are yet separate and distinct so long as the present dual form of government endures. The States are in their sphere as independent of the general Government as that Government within its sphere is independent of the states.[38]

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[37] *Educational Films Corp.* v. *Ward*, 282 US 379, 75 L.ed. 400; *Colorado* v. *Symes*, 286 US 510, 76 L.ed. 1253; *Beal* v. *Missouri Pac. R. R. Co.*, 312 US 45, 85 L.ed. 577.

[38] *Brush* v. *Commissioner of Internal Revenue*, 300 US 352, 81 L.ed. 691; *Buffington* v. *Day*, 11 *Wall.* 113, 20 L.ed. 122; *White* v. *Hart*, 13 Wall 646, 20 L.ed. 685; *Ableman* v. *Booth*, 21 How. 506, 16 L.ed. 169; *Dodge* v. *Woolsey*, 18 How. 331, 15 L.ed. 401; *McCulloch* v. *Maryland*, 4 Wheat. 316, 4 L.ed. 579.

Although defenses of laches, estoppel and prescription may not be urged by individuals against a state or the Federal Government because the sovereign is immune from such a plea, the rule is different where two sovereign powers are involved. In *Phillips* v. *Payne*, 92 US 130, 132, 23 L.Ed. 649 this Court said:

> "The law of prescription applies to nations with the same effect as between individuals."[39]

Estoppel, like prescription, resting on considerations of fairness and justice, has been applied between sovereign nations. See Lauterpacht, Private Law Sources and Analogies of International Law (London, 1927) 203-207, citing seven important international arbitration cases where estoppel was made the basis of the award.

In the case of *Maryland* v. *West Virginia*, 217 U.S. 1, 42, 54 L.Ed. 645, 658 this Court said [40]:

> "As said by this court in the recent case of *Indiana* v. *Kentucky*, 136 U.S. 479, 510, 34 L.ed. 329, 332, 10 Sup. Ct. Rep. 1051, 'it is a principle of public law, universally recog-

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[39] See also: *Arkansas* v. *Tenn.*, 310 US 563, 570, 84 L.ed. 1362, 1366–7; *New Mexico* v. *Texas*, 275 US 279, 298–9, 72 L.ed. 280; *U. S.* v. *Chaves*, 159 US 452, 464, 40 L.ed. 215, 220; *Guaranty Trust* v. *U.S.*, 304 US 126, 134, 82 L.ed. 1224, 1229.

[40] See also: *Rhode Island* v. *Mass.*, 4 How. 591, 639, 11 L.ed. 1116, 1137; *Louisiana* v. *Miss.*, 202 US 1, 53, 50 L.ed. 913, 932; *Indiana* v. *Kentucky*, 136 US 479, 510, 34 L.ed. 329, 332.

nized, that long acquiescence in the possession of territory, and in the exercise of dominion and sovereignty over it, is conclusive of the nation's title and rightful authority'."

It will thus be seen that the law of nations on the subject of prescription, laches and estoppel has been applied by this Court to the sovereign States of the United States. Louisiana is entitled to urge these defenses here and to give evidence on these matters.

IV. JUSTICE AND CONVENIENCE REQUIRE TRIAL IN FEDERAL COURT IN LOUISIANA.

As set forth in Louisiana's opposition to motion for leave to file complaint, the evidence which it proposes to introduce in the event of a trial of its controversy with the United States consists of the testimony of witnesses and the introduction of evidence of numerous maps, charts, diagrams, foreign treaties and documents which this Court will not judicially notice. The State will also prepare and have witnesses to testify concerning the records of the State Land Office, the Department of Conservation, the State Mineral Board and the records of other State offices. It would be a matter of great expense and inconvenience if the State of Louisiana were obliged to transport its witnesses, documents and other exhibits to Washington, D.C. The State of Louisiana is therefore entitled to insist upon a hearing of the issues involved in a Dis-

trict Court of the United States having jurisdiction in the State of Louisiana and located therein.

As a general rule an action must be brought in the State and in the county or parish where the defendant resides, and this principle of law is ordinarily embodied in statutes which fix the venue of the action (92 CJS 777 and cases cited). The privilege conferred on a defendant of being sued at his domicile is a valuable and substantial right and those exceptions which have been made to the rule grow out of some special need for a relaxation of this ancient requirement. Ordinarily a defendant should not be put to the trouble and expense of transporting his witnesses and exhibits to some distant forum.

One of the purposes of amending Section 1251 of Title 28 of the United States Code by the Act of June 25, 1948 was to permit concurrent jurisdiction in the District Courts of the United States in controversies between the United States and a State so as to provide a more convenient forum for the trial of cases of this kind. The opinion of this Court in *Georgia* v. *Pennsylvania R. R. Company*,[41] recognized the convenience of the parties and witnesses as one of the reasons why the Supreme Court should not exercise original jurisdiction in certain cases where a district court would be a more appropriate forum.

[41] 324 US 465, 89 L.ed. 1067.

The complaint and the brief in support of plaintiff's motion for leave to file it both indicate that the United States intends to rely on questions of law and does not intend to offer oral or documentary evidence. The Court therefore need not consider the convenience of plaintiff as any factor affecting the venue of this action.

V. CONTROVERSIES SHOULD NOT BE DECIDED IN PIECEMEAL FASHION.

Plaintiff's motion and complaint in this case attempts in piecemeal fashion to dispose of the controversies between the United States and the State of Louisiana over the submerged lands and resources within the boundaries of Louisiana.

The complaint asks this Court to determine only whether the outer boundary of Louisiana recognized by the Submerged Lands Act, is located three miles or three leagues seaward from Louisiana's coast line. That is asking this Court to do a vain and useless thing.

The locality of the area belonging to Louisiana cannot be fixed without determining both lines, which constitute respectively the inner and the outer boundaries of the marginal belt. The judicial action sought by the plaintiff would waste the time of this Court in a partial and piecemeal and wholly inconclusive determination, that would leave still wholly controversial and unsettled the major essential factor in the location of the area

in question. A determination either that the marginal belt extends three leagues from the coast line, or that such area extends three miles from the coast line, does not locate even the outer boundary of the area in the absence of a determination of the location of the coast line itself.

Act 33 of 1954 was passed by the Legislature of Louisiana to redefine and delineate its coast line as the line of demarcation between the inland waters and the open sea as fixed by the United States pursuant to the Act of Congress of February 19, 1895, 28 Stat. 672, 33 USC 151. This coast line meets the definition contained in Title 43 of the United States Code, Section 1301, 67 Stat. 29 wherein the term "coast line" is defined as the line of ordinary low water along that portion of the coast which is in direct contact with the open sea "and the line marking the seaward limit of inland waters." However, the Federal Government takes the position that the coast line of Louisiana follows the shore of the Gulf and the various indentations that mark its mainland. If this controversy were to be solved on the basis of the Federal Government's contention, then considerable testimony must be produced to show just where the shores of Louisiana were at the time of its admission into the Union. This is so because the same section of the Code defines the term "boundaries" to mean the seaward boundaries of

the State "as they existed at the time such State became a member of the Union."

Considerable changes have occurred in the shore line of Louisiana since the year 1812. In some places the shore line has receded several miles whereas in others it has been extended by accretion a substantial distance seaward. Louisiana's coast is highly irregular. The gulfward extremities of such coast consist of innumerable sand bars, shoals, reefs, islands, peninsulas, bayous, bays and marsh. It is difficult, if not impossible, to determine on mere sight just where the open Gulf begins. Winds, tides and other physical forces have brought and are bringing about frequent changes in these areas of shallow water. In any case a determination either of the width or the location of the coast line, or both, will require the taking of evidence and the introduction of numerous maps, charts, official and historical documents. It will also require the testimony of surveyors, historians, and other experts.

This Court has already signed an order to permit the testimony of Dr. James P. Morgan to be taken in pursuance of Louisiana's petition, *In the matter of the Perpetuation of the Testimony of Dr. James P. Morgan*, No. 14, Original, October Term, 1955. Such testimony has been taken and is on file in the office of the Clerk of this Court. But Dr. Morgan's testimony covers only one of the many issues in-

volved in the boundary dispute between the United States and the State of Louisiana. Louisiana has other witnesses whose testimony is indispensable to a proper disposition of the controversy aforesaid. These matters cannot be properly presented to the Court except through a trial in a District Court of the United States located and having jurisdiction in the State of Louisiana.

Plaintiff's brief indicates an urgent need for an adjudication concerning the width of Louisiana's marginal belt and the reason for this, according to plaintiff, is the need for exploration and development of the mineral resources of the area. Such a purpose cannot be accomplished by a piecemeal decision of the controversy.

For the reasons set forth herein above the Court should deny plaintiff's motion for leave to file its complaint.

Respectfully submitted,

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PROOF OF SERVICE

I,....., one of the attorneys for the State of Louisiana, defendant herein, and a member of the Bar of the Supreme Court of the United States, certify that on the.....day of....., 1956, I served copies of the foregoing Opposition to Plaintiff's Motion For Leave To File Complaint and Brief in support thereof, by leaving copies thereof at the offices of the Attorney General and of the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D. C.

.....

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MAR 7 1956
HAROLD B. WILLEY, Clerk

No. [illegible] Original

In the Supreme Court of the United States

October Term, 1955

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MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 15, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

MEMORANDUM FOR THE UNITED STATES IN REPLY TO LOUISIANA'S BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT

Louisiana's brief in opposition to the Government's motion reflects so serious a misunderstanding of the issues that it seems desirable, without attempting to discuss it in detail, to point out briefly wherein it fails to meet the real considerations advanced in support of the Government's motion.

I

THE LOCATION OF THE STATE'S MARITIME BOUNDARY INVOLVES EXTREMELY IMPORTANT AND SENSITIVE QUESTIONS OF FOREIGN POLICY

Louisiana derides (pp. 31–34) the Government's allegation that "the fundamental question in issue is the width of the marginal sea

within the jurisdiction of the United States, which involves inquiry into and application of the foreign policy of the United States in a matter of peculiar importance and delicacy" (Complaint, par. IX, p. 7), characterizing it as "wishful thinking" (Brief, p. 31) and "frivolous" (p. 32). However, the State's discussion of this question rests entirely upon the misconception that the matter of foreign relations referred to by the United States is the danger that offshore drilling will be objectionable to other nations or vulnerable to attack by them. The United States does not regard these considerations as frivolous, nor has this Court so regarded them, *United States* v. *California*, 332 U. S. 19, 34–36, but they are not our present concern. Congress has determined that, with certain limitations, State ownership of submerged lands within State boundaries is compatible with the national interest, and has granted such lands to the States by the Submerged Lands Act, limiting the grant to lands within the States' boundaries at the time they entered the Union or as since approved by Congress (67 Stat. 29, 43 U. S. C., Supp. II, 1301–1315). We are here concerned with determining the scope of that grant, which depends upon the location of the maritime boundary. In our view, the State's boundary cannot extend beyond that of the nation. Thus our present problem involves finding, as a limiting factor, the location of the national maritime boundary.

It would be difficult to conceive of any governmental problem more essentially concerned with foreign relations than that of maritime boundary. It affects not merely a single other nation, as an inland boundary does, but rather is of immediate concern to every nation whose citizens have access to the oceans of the world. Maritime boundary claims have been the subject of repeated diplomatic exchanges, international litigation, arbitration, and even the use of armed force. From its very beginning, this nation has held firmly to the principle that three miles is the proper limit for the extension of a nation's jurisdiction over the sea, and has insisted on our right to enjoy freedom of the seas to within that distance of the coasts of foreign nations. This policy is not, as Louisiana seems to imply (Brief, p. 31), a mere device opportunistically contrived to secure federal rather than State ownership for the greatest possible number of oil wells in the present controversy. It has been a cornerstone of our foreign policy, thoughtfully adopted in the light of our most fundamental interests as a great naval and mercantile power, and has been uniformly defended by administrations of every political complexion, from 1793 to the present day. The United States and the other principal maritime powers are now engaged in a continuing struggle to maintain the 3-mile limit, against a rising tide of claims by smaller nations to territorial

sovereignty over much broader belts of the ocean, extending seaward in some cases as much as 200 miles. As recently as February, 1956, at the Third Meeting of the Inter-American Council of Jurists (an organ of the Organization of American States), the United States vigorously opposed a resolution rejecting the 3-mile limit, and only with difficulty succeeded in having the adoption of the resolution characterized as "preparatory study" rather than as a definitive adoption of policy. Clearly, any adjudication of the width of the marginal sea in domestic litigation will have its international repercussions. In these circumstances, the United States submits that the issue of its territorial jurisdiction over the sea cannot be viewed otherwise than as a serious and delicate matter of foreign policy.

II

FACTUAL EVIDENCE IS NOT NECESSARY OR APPROPRIATE FOR ESTABLISHING THE WIDTH OF THE MARGINAL SEA

The major portion of Louisiana's brief (pp. 8–36) is devoted to the proposition that the case will require presentation of much factual testimony and evidence of which the Court will not take judicial notice. That discussion misconceives the issue actually presented here. First, Louisiana refers to foreign treaties, statutes and proclamations relating to the marginal belt of

Louisiana before its purchase by the United States. These are plainly irrelevant. The extent of the maritime jurisdiction of the United States depends upon the foreign policy of the United States, not that of any predecessor sovereign. The boundary in question, under the relevant provision of the Submerged Lands Act, is that which "existed at the time such State became a member of the Union." Sec. 2 (b), 67 Stat. 29, 43 U. S. C., Supp. II, 1301 (b). When Louisiana entered the Union, in 1812, its maritime boundary depended on the law of the United States, and had depended on that law since the Louisiana Purchase in 1803. The law of predecessor sovereigns need not be considered.[1]

As pointed out above, the territorial extent to which the United States asserts jurisdiction over the adjoining seas is a political question involving foreign relations. As to such questions, courts do not take evidence, but seek and accept as binding the statements of the executive branch of the

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[1] The treaties referred to, if material, would properly be subject to judicial notice as facts of history. Many have appeared in official publications subject to judicial notice. *E. g.*, the treaties of Fountainbleau of 1762 and San Ildefonso of 1800 (Louisiana's Brief, p. 12) are set out in 13 Cong. Deb. (24th Cong., 2d Sess., 1837), Pt. 2, App., at pages 226 and 229, respectively. If other foreign treaties, statutes or proclamations should be considered material, receipt of authenticated copies in evidence should present no difficulties to this Court; there is no reason to anticipate any dispute over the authenticity of any such documents.

Government. *Jones* v. *United States*, 137 U. S. 202 (jurisdiction of the United States over the island of Navassa); *Pearcy* v. *Stranahan*, 205 U. S. 257 (non-jurisdiction of the United States over the Isle of Pines); *In re Cooper*, 143 U. S. 472 (jurisdiction of the United States over the waters of Bering Sea);[2] *The Alleganean: Stetson* v. *United States* (Second Court of Commissioners of *Alabama* Claims), IV Moore, *International Arbitrations*, 4332, 4341 (jurisdiction of the United States over Chesapeake Bay). Thus in *United States* v. *California*, 332 U. S. 19, 33–34, this Court relied on legislative and executive declarations of adherence to the 3-mile rule when it said:

> That the political agencies of this nation both claim and exercise broad dominion and control over our three-mile marginal belt is now a settled fact. * * * And this assertion of national dominion over the three-mile belt is binding upon this Court. * * *

At an appropriate time, the United States will furnish to the Court references to executive statements fixing the national boundaries. It is respectfully submitted that such statements will

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[2] The jurisdiction there asserted was later disavowed by the Executive Branch of the Government. XII *Fur Seal Arbitration. Proceedings of the Tribunal of Arbitration at Paris. 1893*, Oral Argument for the United States, pp. 107–110. This does not, of course, detract from the force of the holding of *In re Cooper* that the courts will follow executive determinations in such matters. *Cf.* II *op. cit.*, Case of the United States, p. 84.

be determinative of the question.[8] Certainly the question is not an appropriate subject for testimony or detailed factual evidence of the sort suggested by Louisiana.

Louisiana argues (Brief, p. 27) that its title to a 3-league marginal belt can be established by evidence of long-continued conduct of the State. Such is not the case. Since the primary question is the width of the *national* marginal belt, the answer must be found in national assertions, whether by words or by conduct. State conduct would be material only to the extent that it was ratified or adopted by the Nation; since the conduct of national affairs not merely fails to disclose, but in fact affirmatively refutes, the ex-

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[8] The diplomatic history of the United States amply demonstrates that this nation has indeed consistently adhered to the 3-mile limit. Assertions of this position appear in letters of Secretaries of State from 1793 to the present day, set out in I Moore, *Digest of International Law* (1906) 702–732; I Hackworth, *Digest of International Law* (1940) 623–642; 99 Cong. Rec. 3620–3625 (1953); Senate Interior Committee Hearings on S. J. Res. 13, 83d Cong., 1st Sess., 321–323. Treaties of the United States have repeatedly adopted the same position. Treaty with Great Britain, Oct. 20, 1818, 8 Stat. 248, 249; Treaty with Great Britain, Jan. 23, 1924, 43 Stat. 1761; Treaty with Germany, May 19, 1924, 43 Stat. 1815; Treaty with Panama, June 6, 1924, 43 Stat. 1875; Treaty with the Netherlands, Aug. 21, 1924, 44 Stat. 2013; Treaty with Cuba, Mar. 4, 1926, 44 Stat. 2395; Treaty with Japan, May 31, 1928, 46 Stat. 2446; *cf.* Treaty with Great Britain, Nov. 19, 1794, 8 Stat. 116, 128 (referring to taking of prizes within cannon-shot of the coast as a violation of territorial rights); Treaty with Algiers, June 30 and July 6, 1815, 8 Stat. 224, 225.

istence of any federal ratification or adoption of such assertions by the State, claims or conduct by the State can have no significance, and evidence regarding them would be wholly immaterial.[4]

Louisiana argues (Brief, pp. 35–36) that evidence of its long-continued conduct will be proper evidence in support of its defenses of laches, estoppel or prescription. That is urged on the theory that those defenses, though admittedly not ordinarily available against the United States, are available as between sovereigns and so may be raised here. It is true that those defenses are proper ones as between equal sovereigns, whether nations or States of the United States; but the Nation and its constituent States, though both sovereign, are not equal sovereigns, and those defenses may not be asserted by a State against the Nation. *United States* v. *California*, 332 U. S. 19, 39.

Louisiana's argument that it is entitled to introduce factual evidence as to the physical location of its coast line will be discussed under Point III, *infra*.

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[4] The considerations which we deem relevant to the determination of the issue of whether Louisiana's boundary is located, under the Submerged Lands Act, a distance of three miles or three leagues seaward from the coast are set forth at some length in our Brief in Support of Motion for Modification of Decree, *United States* v. *Louisiana*, No. 7, Original, October Term, 1954.

III

THE WIDTH OF THE MARGINAL SEA SHOULD BE DETERMINED BEFORE MAKING A DETAILED FACTUAL INQUIRY INTO THE PHYSICAL LOCATION OF ALL POINTS ON THE COAST LINE

Louisiana argues (Brief, pp. 38–41) that leave to file the Government's complaint should be denied on the ground that it seeks a "piecemeal" determination of the controversy between the parties. The contention is that the parties are in disagreement not only as to the width of the marginal belt but also as to the location of the base line from which that width is to be measured, *i. e.*, the line of the ordinary low-water mark and outer limit of inland waters. The State urges that since these two disputes both enter into the ultimate question of the boundary between State and federal submerged lands, it would be improper to permit the filing of a complaint that sought to resolve only one of them. Further, it is said that the question of location of the base line will require the taking of a large amount of factual evidence.

There can be no doubt that any adjudication of the location of the base line will require the taking of factual evidence. The Louisiana coast line is an extraordinarily complicated one. Some idea of its complexity can be gained from the fact that while the "general coast line" of the State is only 397 miles long, the detailed tidal shore line has a

length of 7,721 miles. *World Almanac* (1955), p. 258. In addition to its involved configuration, it presents through much of its length a contour so nearly level that even minor wind variations can cause very substantial differences in the point to which the tide retreats. Finally, the shore line is not a stable one, but is subject through most of its length to rapid and substantial changes. To insist, as Louisiana does, that the width of the marginal belt cannot be decided except as part of a decision as to the precise location of the entire length of this elusive coast injects unnecessary delay and complexity. A judicial inquiry into the precise location of the entire shore line might be stretched to require many years for completion.

It is for these reasons that the United States has cast its complaint in a form that will permit this Court to decide, separately and at the outset, the independent legal question of the width of the marginal belt. Such a decision will immediately reduce by six miles the width of the area in dispute between the parties. Once the controversy is put in such posture that only the location of the base line remains in doubt, it may be possible for the parties to come to an agreement as to its location, at least in some places. Even where that cannot be done, supplemental decrees can be entered, as necessary, fixing the location of limited portions of the base line, from which the width of the marginal belt

can then be laid off without further delay. The evidence for such purpose could be taken by a Special Master, appointed by this Court for that purpose, who could sit in Louisiana, Washington, or both, according to the particular testimony or evidence to be offered.

The United States submits that this is the most reasonable and practical way to handle this case. It corresponds to the procedure followed in *United States* v. *California*, 332 U. S. 19; *United States* v. *Louisiana*, 339 U. S. 699; and *United States* v. *Texas*, 339 U. S. 707. When California objected that the decree sought against it was in general terms and did not specifically identify the land to which it referred, this Court rejected that objection, saying (332 U. S. at 26):

> We may assume that location of the exact coastal line will involve many complexities and difficulties. But that does not make this any the less a justiciable controversy. Certainly demarcation of the boundary is not an impossibility. * * * And there is no reason why, after determining in general who owns the three-mile belt here involved, the Court might not later, if necessary, have more detailed hearings in order to determine with greater definiteness particular segments of the boundary. * * * Such practice is commonplace in actions similar to this which are in the nature of equitable proceedings.

Since it would require many years to reach a specific decision as to the precise location of every inch of the Louisiana shore, no District Court should be burdened with such a lawsuit if it can be handled in another way.[5] The United States submits that it has proposed a very much better way to handle this case.

IV

THIS COURT IS THE APPROPRIATE FORUM

The considerations we have discussed—both affirmative and negative—mark this Court as the appropriate forum. The special nature of the subject matter, the non-factual and unencumbered character of the issue which the proposed Complaint presents, as well as the direct precedents in this field, all combine to sustain this controversy as a proper one for the Court's original jurisdiction. The Congress which enacted the Submerged Lands Act contemplated that the question of a State's boundary would be determined by this Court (see our Brief in Support of Motion, p. 11; also, Brief in Support of Motion for Modifica-

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[5] Louisiana does not here repeat its claim of right to a jury trial, asserted in its Plea to the Jurisdiction filed Aug. 29, 1955, in *United States* v. *Louisiana*, No. 7, Orig., Oct. Term, 1955, page 4. Presumably, if the United States were relegated to a District Court, the State would renew its claim there. The mere thought of condemning a jury to such a protracted trial shows the impracticality of the State's position.

tion of Decree, pp. 12–17, No. 7, Orig., Oct. Term, 1954), and the Court has already decided issues under that Act. *Alabama* v. *Texas*, 347 U. S. 272. In sum, the question raised by the Complaint is of the calibre and character, and is presented in a posture, appropriate for resolution by this Court, rather than some other tribunal.

CONCLUSION

For the foregoing reasons, and those in its Brief in Support of the Motion, the United States submits that leave to file the Complaint should be granted.

Respectfully submitted.

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In the Supreme Court of the United States

OCTOBER TERM, 1955

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

MOTION FOR INJUNCTION AND BRIEF IN SUPPORT OF MOTION

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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 15, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

MOTION FOR INJUNCTION RESTRAINING DEFENDANT FROM PROCEEDING IN ANY OTHER COURT AND FOR A STAY

I

On December 11, 1950, this Court entered its decree in the case of *United States* v. *State of Louisiana,* Number 12, Original, declaring the United States to be possessed of paramount rights in and full dominion and power over the submerged lands and minerals of the Gulf of Mexico lying seaward of the ordinary low-water mark on the coast of Louisiana and outside of the inland waters, extending seaward twenty-seven marine miles, and enjoining the State of Louisiana and persons claiming under it from interfering therewith except on prior authorization of the United States. 340 U. S. 899.

II

By the Submerged Lands Act of May 22, 1953, the United States granted to the State of Louisiana the submerged lands and minerals above described, lying within the boundaries of the State, but not extending into the Gulf of Mexico more than three marine leagues from the ordinary low-water mark and outer limit of inland waters. 67 Stat. 29, 43 U. S. C. Supp. II, 1301–1315.

III

The State of Louisiana claims to have received title under said Submerged Lands Act to a very large area of submerged land which the United States claims lies seaward of the boundary of the State and so did not pass to the State under said Act. On December 19, 1955, the United States applied to this Court for leave to file its complaint herein against the State of Louisiana to quiet its title to the disputed area. On March 26, 1956, this Court entered its order granting leave to file the complaint and requiring the State of Louisiana to respond thereto within thirty days. 350 U. S. 990.

IV

On April 10, 1956, the State of Louisiana applied for an extension of time to June 25, 1956, within which to answer, upon the ground that such extension was made necessary by the change

in State administration, taking place on May 16, 1956. That application was not opposed by the United States and was granted by this Court on April 16, 1956. The State of Louisiana has not yet filed its answer herein.

V

From time to time the United States has issued oil and gas leases, and has permitted maintenance of State-issued oil and gas leases, under the Outer Continental Shelf Lands Act of August 7, 1953 (67 Stat. 462, 43 U. S. C. Supp. II, 1331–1343), of submerged lands lying seaward of those granted to the State of Louisiana by the Submerged Lands Act.

VI

On May 11, 1956, the State of Louisiana filed in the Fourteenth Judicial District Court in and for the Parish of Calcasieu, State of Louisiana, its petition against Edward Woozley, Director of the Bureau of Land Management, Department of Interior, Sidney Groom, Manager of the Outer Continental Shelf Office of the Bureau of Land Management at New Orleans, and twenty-four oil companies. Said action is entitled *State of Louisiana* v. *Anderson-Pritchard Oil Corporation, et al.*, Number 38780. The petition alleges that Louisiana "has, at all times, exercised exclusive ownership, possession, use and administration" of

the disputed submerged lands and minerals "continuously since she was admitted into the Union," and that title was confirmed in Louisiana by the Submerged Lands Act. Louisiana seeks a restraining order and temporary and permanent injunctions restraining the defendants from trespassing on said lands, from proceeding with a lease sale noticed for May 15, 1956, or from interfering in any way with said lands and minerals. It prays for appointment of a curator ad hoc to represent defendant Edward Woozley, who is not present in Louisiana and whose office is in Washington, D. C. On the same day, the court appointed a curator ad hoc and issued a restraining order as prayed.

VII

Acting through the United States Attorney for the Western District of Louisiana, the United States attempted to remove this cause to the United States District Court for that district. The United States District Court ordered a partial remand to the state court, stating that it should not take the case while a proceeding to determine the same issue was pending before the Supreme Court, but the matter is still pending before it on a petition for rehearing. The sale of leases scheduled for May 15, 1956, has been postponed.

VIII

This action by the State of Louisiana in bringing and prosecuting the suit above described is an attempt to circumvent the jurisdiction of this Court by securing an adjudication in the courts of the State of the same questions concerning the same submerged lands which are in issue before this Court in the above-entitled cause. The State court is without jurisdiction to interfere with the conduct of officials of the United States in performance of their official duties, but the State has by inducing the State court to enter the order subjected federal officials and those claiming under Federal laws to the risk of contempt proceedings. This will work a great and irreparable injury to the United States.

WHEREFORE, the United States prays that this Court issue an injunction, restraining the State of Louisiana from proceeding with said suit or seeking to enforce the restraining order issued therein against the United States or those claiming under it or proceeding in any other court on the issue now pending in this Court, and, if this motion cannot be determined on its merits during the present term of Court, to order a stay of the State Court proceedings, either in the State court or as removed to the federal District Court, pending a determination on the present motion.

The United States further prays that the State of Louisiana be required to respond to this motion within seven days rather than the twenty days provided in Rule 35.

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MAY 1956.

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 15, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

BRIEF IN SUPPORT OF MOTION FOR AN INJUNCTION

JURISDICTION

On March 26, 1956, this Court entered its order granting the United States leave to file its complaint in this cause. The State of Louisiana has not yet filed its answer. The jurisdiction of this Court is invoked under 28 U. S. C. 1651.

STATUTE INVOLVED

Generally there are involved the Submerged Lands Act, 67 Stat. 29, 43 U. S. C. (Supp. II) 1301–1315, and the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U. S. C. (Supp. II) 1331–1343. However, the matter here presented to the Court on this motion does not depend on any specific provision of those Acts.

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QUESTION PRESENTED

Whether, after an original action by the United States dealing with the title to submerged lands off the coast of the United States and beneath the marginal sea has been accepted for filing in this Court, the defendant State should be enjoined from attempting to litigate the same issue in any other court.

STATEMENT

On June 5, 1950, this Court entered its opinion in *United States* v. *Louisiana*, 339 U. S 699, holding that the United States had paramount rights in the submerged lands off the coast of Louisiana up to mean low water and outside inland water. An order enjoining Louisiana from interfering with those rights was issued on December 11, 1950, 340 U. S. 899.

Subsequently, the Submerged Lands Act, 67 Stat. 29, 43 U. S. C. (Supp. II) 1301–1315, became law. Under this Act Louisiana was vested with title to all submerged lands within its historic boundaries, but extending no more than three leagues into the Gulf of Mexico. The constitutionality of the Submerged Lands Act was sustained in *Alabama* v. *Texas*, 347 U. S. 272.

In addition, the United States has proceeded to confirm prior state oil and gas leases and issue new leases off the coast of Louisiana pursuant to the provisions of the Outer Continental Shelf

Land Act, 67 Stat. 462, 43 U. S. C. (Supp. II) 1331–1343.

Meanwhile, a dispute has arisen between Louisiana and the United States with respect to the extent of the lands granted the former under the Submerged Lands Act. This led to the institution of an original suit in this Court to resolve that issue. The Court granted the United States leave to file its complaint on March 26, 1956. 350 U. S. 990. Louisiana, having obtained an extension of time, has not yet answered.

On May 11, 1956, Louisiana commenced an action in the Fourteenth Judicial District Court in and for the Parish of Calcasieu, State of Louisiana, naming as defendants two employees of the Department of Interior and twenty-four oil companies. In this suit Louisiana asserted it held title to submerged lands leased and being leased by the United States, and asked for injunctive relief. A copy of the complaint is attached hereto as Appendix A. The State court on the same day issued a restraining order to prevent the employees of the Interior Department from carrying through an advertised sale of leases set for May 15, 1956, and preventing the oil company defendants from bidding, attached hereto as Appendix B. Although the United States attempted to get relief from the restraining order through a removal proceeding to the United States District Court for the

Western District of Louisiana and through a petition for an injunction in the same court, the removal proceeding was remanded as against the United States officials and the injunction was denied. A petition for rehearing is now pending.

The Interior Department postponed its offering of oil leases previously scheduled for May 15, 1956.

REASONS FOR GRANTING THE MOTION

An examination of Louisiana's complaint in the State court proceeding and the complaint of the United States in *United States* v. *State of Louisiana*, No. 15 Original, this Term, shows that without question the State of Louisiana is seeking to litigate in the proceeding commenced by it in the State court the very issue which is before this Court in No. 15, Original, namely the width of the submerged lands granted to Louisiana by the Submerged Lands Act. Not only is this legal issue common to the two cases, but the submerged lands involved are the very same. While the United States was not named as a party in the suit in the State court, two officials of the Department of Interior were and the prayer for relief covers their actions as officials of the United States. Therefore, it is apparent that what Louisiana is attempting to do is to try out in its own State court an issue which is already before this Court. This is, we submit, improper, and Louisiana can and should be enjoined from proceeding further.

I

THIS CASE IS ONE IN WHICH INJUNCTIVE RELIEF AGAINST TRIAL IN ANOTHER COURT IS APPROPRIATE AND NECESSARY

This is not the kind of case which can be carried on in two courts at once, as is possible with certain purely *in personam* actions. Here, we have a definite *res*, the submerged lands off the coast of Louisiana, which can be leased, drilled into, and from which oil and gas can be produced only in accordance with the directions of a single jurisdiction. At the present time a restraining order is outstanding issued by a State court forbidding action by certain federal officers as well as operations by lessees. At that same time the injunction against the State issued by this Court in the original case of *United States* v. *Louisiana*, 340 U. S. 899, is also outstanding. These two orders are essentially in conflict with each other. The only way they can be reconciled is for neither State nor Federal officials, nor the lessees of either, to do anything at all in the disputed area—a solution which would delay indefinitely the development of the area and result in great loss to the lessees for large sums already expended there.[1]

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[1] As pointed out in Paragraph VII of the Complaint in this case, the United States has issued leases in the submerged lands in question, and lessees are presently carrying on drilling and production activities in the area.

This case thus presents the classic example of the situation where the courts have no reasonable method for bringing order out of chaos except by requiring the parties to proceed in one court only. As this Court stated in *Kline* v. *Burke Construction Co.*, 260 U. S. 226, at 235:

> The rank and authority of the [federal and state] courts are equal but both courts cannot possess or control the same thing at the same time, and any attempt to do so would result in unseemly conflict. The rule, therefore, that the court first acquiring jurisdiction shall proceed without interference from a court of the other jurisdiction is a rule of right and of law based upon necessity, and where the necessity, actual or potential, does not exist, the rule does not apply. Since that necessity does exist in actions *in rem* and does not exist in actions *in personam*, involving a question of personal liability only, the rule applies in the former but does not apply in the latter.

See also *Toucey* v. *N. Y. Life Insurance Co.*, 314 U. S. 118.

It is appropriate that jurisdiction be maintained in this Court not only because it first took the case, but, and even more important, because of the nature of the issues here involved. As was pointed out in the brief of the United States in support of its motion for leave to file its complaint (Br. 15–17) and again in the reply memo-

randum (Reply Mem. 1–4), this case involves very delicate problems of international law and foreign relations, since it turns mainly on a determination of the external boundary of the United States. The dispute is between the United States and an individual State, which in itself gives rise to doubts that it should or could be tried in a State court, and the issues are also, as we have said, of serious international import. See *United States* v. *California,* 332 U. S. 19, 34–36.

Since this is not a case that can be tried in two jurisdictions simultaneously, and since this Court not only has priority, but is the only appropriate court for the settlement of the controversy between the United States and Louisiana, the parties should be required to try it there alone.

II

AN INJUNCTION AGAINST PROCEEDING IN A STATE COURT IS NOT FORBIDDEN BY 28 U. S. C. 2283

Section 2283 of Title 28 provides:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

We submit that this provision does not bar the relief here requested because this injunction

falls within the specific exception as "necessary in aid of its [the Federal court's] jurisdiction", and secondly, because the provision is, in any event, inapplicable to the United States.

A. THE INJUNCTION HERE REQUESTED IS NECESSARY TO PRESERVE THE JURISDICTION OF THIS COURT

As pointed out above, the classic example of the situation where an injunction is necessary to preserve the jurisdiction of a court is where a suit respecting a specific *res* has been commenced in one court (*supra*, p. 12). There it has always been held that the court can protect its jurisdiction by enjoining subsequent proceedings in another court. *Covell* v. *Heyman*, 111 U. S. 176; *Kline* v. *Burke Construction Co.*, 260 U. S. 226; *Toucey* v. *New York Life Insurance Co.*, 314 U. S. 118; *Baltimore and Ohio Railroad Co.* v. *Wabash Railroad Co.*, 119 Fed. 678 (C. A. 7). And such a situation has been recognized as falling within the exception to § 2283 of Title 28. See *Amalgamated Clothing Workers* v. *Richman Brothers Co.*, 348 U. S. 511, 514–515.

In addition, this case is one which is by its nature exclusively triable in a Federal court. In the first place, the issue involved is the right of the United States to certain property, the type of issue which has often been held triable in a federal court exclusively. *United States* v. *Imaba*, 291 Fed. 416 (E. D. Wash.); *United States* v. *McIntosh*, 57 F. 2d 573 (E. D. Va.), appeal dis-

missed, 70 F. 2d 507 (C. A. 4); *United States* v. *Babcock*, 6 F. 2d 160 (D. Ind.), modified on other grounds, 9 F. 2d 905 (C. A. 7); *United States* v. *Cain*, 72 F. Supp. 897 (W. D. Mich.); *United States* v. *Phillips*, 33 F. Supp. 261 (N. D. Okla.), vacated on other grounds, 312 U. S. 246; *Leiter Minerals* v. *United States*, 224 F. 2d 381 (C. A. 5), certiorari granted, 350 U. S. 964. In all these cases, actions in State courts were enjoined.

Secondly, the action in the State court, although not naming the United States as a party, does raise the issue of the right of the United States to certain property and seeks to enjoin federal officers from performing official duties in connection with that property; therefore, the action is in the nature of a suit against the United States which cannot proceed without the consent of Congress that the United States be sued. *E. g. Minnesota* v. *Hitchcock*, 185 U. S. 373; *Oregon* v. *Hitchcock*, 202 U. S. 60; *Louisiana* v. *Garfield*, 211 U. S. 70; *Larson* v. *Domestic & Foreign Commerce Corp.*, 337 U. S. 682. The State court, therefore, has no jurisdiction over the United States and the retention of jurisdiction in this Court is necessary for an adjudication of the dispute.

B. SINCE THE UNITED STATES IS NOT SPECIFICALLY NAMED IN 28 U. S. C. 2283, THE PROHIBITION IS INAPPLICABLE TO IT

In *United States* v. *United Mine Workers*, 330 U. S. 258, this Court held the prohibitions of the Norris-LaGuardia Act against injunction in labor

disputes was not applicable to a suit by the United States. The Court stated at page 272, "Statutes which in general terms divest pre-existing rights or privileges will not be applied to the sovereign without express words to that effect."

This rule would seem applicable to the present statute. There can be no doubt that there was a pre-existing right in the United States to sue for an injunction in this type of case. *Toucey* v. *New York Life Insurance Co.*, 314 U. S. 118, 134–136. It may not be assumed that this right would have been erased without specific reference to the United States.

In *United States* v. *Taylor's Oak Ridge Corp.*, 89 F. Supp. 28, 32 (E. D. Tenn.), a United States District Court, in following the rule of law set forth above, held that, "The rule of comity which has been made into statute, 28 U. S. C. A. § 2283, is not applicable where the United States is complainant, for the reason that the sovereign is not included within its terms. *Dollar Savings Bank* v. *United States*, 19 Wall. 227; *United States* v. *Herron*, 20 Wall. 251; *Stanley* v. *Schwalby*, 147 U. S. 508; *United States* v. *Sherwood*, 312 U. S. 584."

III

THE RELIEF REQUESTED IS APPROPRIATE

This cause is submitted to the Court late in the Term not as a matter of choice by the United

States, but because the action in the State court was only recently instituted. Though the timing of the motion makes it difficult to present the matter fully, it is submitted that the case cannot wait until the next Term without great injury to the United States and its lessees.

If the Court cannot make a final determination on our motion in view of the time element, we submit that it should act to stay the State court proceedings until the present motion can be decided.

In view of the lateness of the Term, it is also requested that Louisiana be required to respond to this motion in seven days.

Respectfully submitted.

HERBERT BROWNELL, JR.,
Attorney General.

SIMON E. SOBELOFF,
Solicitor General.

J. LEE RANKIN,
Assistant Attorney General.

OSCAR H. DAVIS,
JOHN F. DAVIS,
Assistants to the Solicitor General.

J. DWIGHT EVANS,
Attorney.

MAY 1956.

APPENDIX A

14th Judicial District Court, Parish of Calcasieu, State of Louisiana

Number 38780

STATE OF LOUISIANA

vs.

ANDERSON-PRITCHARD OIL CORPORATION, ET AL.

PETITION

To the Honorable Judge of the Fourteenth Judicial District Court in and for the Parish of Calcasieu, State of Louisiana:

The petition of the State of Louisiana appearing herein by its Attorney General and the undersigned counsel with respect shows:

1.

Plaintiff, the State of Louisiana, is a sovereign state of the United States and as such has full ownership, use, administration and control of all lands within its seaward boundaries as defined in the Act of Congress of April 8, 1812, 2 Stat. 701, 703, admitting this State into the Union, and the Act of April 14, 1812, 2 Stat. 708, extending its boundaries, said boundaries extending three leagues from the Louisiana coast seaward into the Gulf of Mexico.

2.

The corporate defendants against whom this action is brought and their Louisiana Agents for service of process are as follows:

Corporation name	State where organized	Agents for service of process
Anderson-Prichard Oil Corp	Delaware	C. T. Corporation System, 321 St. Charles, New Orleans.
The California Oil Co	Delaware	Charles E. Dunbar, Jr., Sumpter D. Marks, Jr., Louis B. Claverie, Ashton Phelps, New Orleans.
Continental Oil Company	Delaware	H. Payne Breazeale and Victor Sachse, 315 Main St., Baton Rouge.
Cities Service Production Co	Delaware	Frank William Hart, 2102 American Bank Bldg., New Orleans. U. S. Corporation Co., 2102 American Bank Bldg., New Orleans.
Atlantic Refining Co	Pennsylvania	C. T. Corporation System, 321 St. Charles, New Orleans.
Tidewater Associated Oil Co	Delaware	H. Payne Breazeale, Victor Sachse, Baton Rouge.
Forest Oil Corporation	New York	C. T. Corporation System, 321 St. Charles, New Orleans.
Gulf Refining Company	Delaware	Frederick Greer and I. R. Graves, Texas Eastern Bldg., Shreveport.
Humble Oil & Refining Co	Texas	Tinsley Gilmer and Charles Janvier, New Orleans.
Hunt Oil Company	Delaware	W. O. Woodward, Shreveport.
Kerr-McGee Oil Ind. Inc	Delaware	U. S. Corporation Co., 2102 American Bank Bldg., New Orleans.
Magnolia Petroleum Co	Texas	Dixon Carroll, Shreveport.
The Ohio Oil Company	Ohio	C. T. Corporation System, 321 St.

		Janvier, New Orleans.
Hunt Oil Company	Delaware	W. O. Woodward, Shreveport.
Kerr-McGee Oil Ind. Inc	Delaware	U. S. Corporation Co., 2102 American Bank Bldg., New Orleans.
Magnolia Petroleum Co	Texas	Dixie Carmichael, Shreveport.
The Ohio Oil Company	Ohio	C. T. Corporation System, 321 St. Charles, New Orleans.
Pan-American Production Co	Delaware	J. B. Holloman, Jr., Lake Charles.
Phillips Offshore Oil Co	Delaware	U. S. Corporation Co., 2102 American Bank Bldg., New Orleans.
Placid Oil Company	Delaware	B. B. Barber, Shreveport.
The Pure Oil Co	Ohio	C. T. Corporation System, 321 St. Charles, New Orleans.
Seaboard Oil Co	Delaware	U. S. Corporation Co., 2102 American Bank Bldg., New Orleans.
Shell Oil Company	Delaware	Breazeale, Sachse and Wilson, Attorneys, Baton Rouge.
Sinclair Oil & Gas Co	Maine	Breazeale, Sachse and Wilson, Attorneys, Baton Rouge.
Stanolind Oil and Gas Co	Delaware	T. F. Porter, Weber Bldg., Lake Charles.
The Superior Oil Co	Delaware	Ramond Phelps, Charles Dunbar, Jr., Sumpter Marks, Louis Claverie, New Orleans.
Sun Oil Company	New Jersey	Alvin O. King, Richard A. Anderson, 515 Weber Bldg., Lake Charles, Louisiana.
The Texas Company	Delaware	Richard Lake, The Texas Company Bldg., New Orleans.
Union Oil Co. of California	California	T. F. Porter, Weber Bldg., Lake Charles.

3.

The individual defendants against whom this action is brought are: Sidney Groom, a resident of Orleans Parish, Louisiana, Manager of the Outer Continental Shelf Office, Bureau of Land Management, 608 Masonic Temple Building, New Orleans, Louisiana, and Edward Woozley, United States Department of the Interior, Director of the Bureau of Land Management, United States Department of the Interior, who resides in Washington, D. C.

4.

Louisiana is the holder and owner of the fee simple title to all submerged lands, and natural resources lying and extending three leagues, or 10½ miles seaward from her coast into the Gulf of Mexico, and has, at all times, exercised exclusive ownership, possession, use and administration of said lands, and natural resources in the said marginal belt of lands and waters continuously since she was admitted into the Union, and is presently exercising her rights and prerogatives of ownership thereto, subject only to the rights of the United States in matters of National defense and in the regulation of navigation and interstate and foreign commerce. Said acts of ownership and possession have consisted of the policing, leasing, licensing, development and operation of said lands for the production and sale of oil, gas, sulphur, salt, sand, shells and other minerals, and the planting, cultivation, production and taking of oysters, shrimp, fish and other things of value in or under said lands and waters.

5.

The Act of Congress admitting Louisiana into the Union of the United States of America, which said Act is found in 2 Stat. 701, 703, and in Chapter 50 of the United States Statutes at Large, Volume 2, page 701, approved April 8, 1812, described the boundaries of the State of Louisiana, as follows, in the preamble thereto:

> "Whereas, the representatives of the people of all that part of the territory or country ceded under the name of 'Louisiana', by the treaty made at Paris on the 30th day of April, 1803 (8 Stat. at L. 200), between the United States and France, *contained within the following limits*, that it is to say: *Beginning at the mouth of the river, Sabine*, thence by a line drawn along the middle of said river, including all islands to the 32d degree of latitude; thence due north to the northernmost part of the 33d degree of north latitude; thence along the said parallel of latitude to the River Mississippi; thence down the said river to the River Iberville, and from thence along the middle of said river and lakes Maurepas and Pontchartrain to the Gulf of Mexico; *thence bounded by the said gulf to the place of beginning*, including all islands *within three leagues of the coast*" etc. [Emphasis ours.]

The same limits or boundary was defined in the original Louisiana Constitution of 1812.

6.

The Treaty between the French Republic and the United States concerning the Cession of Lou-

isiana, signed at Paris, France, the 30th day of April, 1802, declared that France had incontestable title to the domain and possession of the colony or province of Louisiana, with the same extent that Spain held it, and that it was when France possessed it, and that France ceded the said territory to the United States, including the adjacent islands belonging to Louisiana and all vacant lands and public squares, and provided that the inhabitants of the ceded territory shall be incorporated in the Union of the United States and admitted as soon as possible, according to the principles of the federal constitution. In this connection plaintiff shows that France held exclusive dominion, title to and possession of Louisiana, its lands, rivers, coasts and seas to the 27th parallel of latitude, said latitude extending seaward about forty leagues into the Gulf of Mexico, by virtue of the Proclamation of LaSalle on April 9, 1682, and held such ownership and possession until November 3, 1762, when it ceded the Louisiana Territory to Spain by the Treaty of St. Ildefonso. Thereafter Spain owned and possessed said territory until it was retroceded to France on October 1, 1800. During said period of Spanish dominion Spanish jurisdiction and ownership was recognized by Great Britain in a treaty signed at the Escurial on October 28, 1790, as extending ten leagues seaward into the Gulf of Mexico and such ownership and jurisdiction was never questioned by any nation. Accordingly the United States was bound by the Treaty of Paris of April 30th, 1803 (the Louisiana Purchase) to recognize and protect Louisiana's title

to the 27th degree of latitude in the Gulf of Mexico, and in any event to the extent that Spain possessed it ten leagues seaward into said Gulf.

7.

Pursuant to Act of Congress (2 Stat. 283), approved March 26, 1804, the United States divided the Louisiana Territory into two territories and designated all of that portion ceded to it by France which lies South of an east and west line commencing on the Mississippi River at the 33rd degree of North latitude and extending west to the western boundary of said cession as the Territory of Orleans. Said Territory of Orleans included all of the lands and waters south of said line without exception, and included the marginal belt extending from the coast of Louisiana ten leagues seaward into the Gulf of Mexico which had been the property of Spain and France during the periods of their respective ownership thereof.

By Act of Congress of February 20, 1811, ch. 21, the people of the Territory of Orleans were authorized to form a constitution for admission of the State into the Union. This Act fixed the same boundaries for the Territory of Orleans as were later defined in the Act of April 8, 1812, for the admission of Louisiana as a State into the Union. as shown in paragraph 5 above.

8.

The boundaries of the State of Louisiana in the Gulf of Mexico were considered by the Supreme Court in the case of *Louisiana* v. *Mississippi*, 202

U. S. 1, 50 L. ed. 913, 26 S. C. 408-9 et seq., and the Court's decision in that case recognized and approved its seaward boundaries three leagues from coast into the Gulf of Mexico, as defined in said Act of April 8, 1812 and as shown by a certain map designated as Diagram No. 1, a copy thereof being on file in the record of said case and appears in the above official reports thereof. Plaintiff further shows that the United States has at all times recognized the fact that States and nations bordering the Gulf of Mexico are entitled to the ownership and possession of submerged lands in said Gulf extending seaward at least three leagues and has evidenced such recognition by treaties with the Republic of Mexico on February 22, 1819, January 12, 1828, February 2, 1848, and December 30, 1853; by Senate Resolution of March 1, 1837 recognizing the independence of Texas and the Treaty of Annexation of Texas concluded in December, 1845; and by Congressional Act of 1868 (15 Stat. 73) approving the Constitution of Florida and fixing its limits three leagues seaward into the Gulf of Mexico. The "equal footing" clause of the United States Constitution accordingly compels recognition of Louisiana's claim to and ownership of all submerged lands lying three leagues seaward from its coast into the Gulf of Mexico.

9.

The Act of Congress of February 10, 1807, approved by Thomas Jefferson as President of the United States, provided authority in the President of the United States for surveying the

coasts of the United States within *20 leagues of any part of the shores of the United States.* In 1895 this authority was vested in the Secretary of the Treasury, when, by Act of Congress of February 19, 1895, c. 102, Section 2, 28 Stat. 672 (33 U. S. C. 151), the Secretary of the Treasury was authorized and directed to designate and define by suitable bearings or ranges with light houses, light vessels, buoys and coast objects, the lines dividing the high seas from rivers, harbors and inland waters.

By Section 4 of the Act of Congress of February 14, 1903, and Section 1 of the Act of Congress of March 4, 1913, this authority was vested in the Secretary of Commerce. By 1946 Reorganization Plan No. 3, Sections 101, 104, effective July 16, 1946 (11 F. R. 7875), 60 Stat. 1097, the authority to establish, designate and define the coast line of the United States under said Acts of Congress was vested in the Commandant of the Coast Guard.

Pursuant to the aforesaid Acts of Congress the line dividing Louisiana's inland waters from the high sea, or Gulf of Mexico, was designated and defined as shown by a map upon which the Commandant of the Coast Guard officially indicated said coast line in broken lines extending from the entrance to Mobile Bay to the Rio Grande River, including the entire coast line of the State of Louisiana.

Said coast line of Louisiana is designated and defined in CG–169, March 1, 1955, pp. 55–6 and 58, Sections 82.1, 82.95, and 82.103.

Section 82.95 designates and defines the coast line or outer boundary of the inland waters from

Mobile, Alabama to Mississippi Passes, La., as follows:

> Starting from a point which is located 1 mile, 90° true, from Mobile Point Lighthouse, a line drawn to Mobile Entrance Lighted Whistle Buoy 1; thence to Ship Island Lighthouse; thence to Chandeleur Lighthouse; thence in a curved line following the general trend of the seaward, high-water shore lines of the Chandeleur Islands to the southwesternmost extremity of Errol Shoal (Lat. 29°35.8′ N., Long. 89°00.8′ W.); thence to Pass a Loutre Lighted Whistle Buoy 4.

Section 82.103 designates and defines the coast line or outer boundary of inland waters from Mississippi Passes, La., to Sabine Pass, Texas, as follows:

> A line drawn from Pass a Loutre Lighted Whistle Buoy 4 to South Pass Lighted Whistle Buoy 2; thence to Southwest Pass Entrance Mid-channel lighted whistle Buoy; thence to Ship Shoal Lighthouse; thence to Calcasieu Pass Lighted Whistle Buoy 1; thence to Sabine Pass Lighted Whistle Buoy 1.

That said coast line, or outer boundary of the inland waters of the State of Louisiana is also officially shown at the same locations as designated and defined by the agencies of the federal government authorized by the aforesaid Acts of Congress on U. S. Coast and Geodetic Charts Nos. 1270 and 1272 to 1279, both inclusive.

10.

The Legislature of the State of Louisiana passed Act No. 33 of 1954 redefining its historic gulfward boundary by accepting and approving its coast line as designated and defined in accordance with applicable Acts of Congress, referred to in paragraph 9 above, and by stating that the Act of Congress of April 8, 1812, which admitted Louisiana as a State in the Union, defined and fixed its boundary at 3 leagues from coast into the Gulf of Mexico. Attached to and made a part of said Act is a map showing said coast line and three leagues from coast boundary line, all of which is made part hereof by reference thereto.

11.

By Act of Congress of May 22, 1953, c. 65, 67 Stat. 29, 43 U. S. C. 1301, et seq., known as the "Submerged Lands Act", the United States disclaimed title to and recognized, confirmed, established and vested in the coastal states, including Louisiana, title to and ownership of the lands beneath navigable waters and the natural resources within such lands and waters, within the boundary line of said States, as it existed at the time such State became a member of the Union, including the right and power to manage, administer, lease, develop and use the said lands and natural resources, and the United States further released and relinquished unto said States, including Louisiana, all right, title and interest of the United States, if any it had, in and to the submerged lands along the coast of said states not

more than three marine leagues into the Gulf of Mexico from the coast line of said states, and defined the term "coast line" to mean "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters."

Said coast line, as the line marking the seaward limit of inland waters, was and is, in fact and in law, the same line as that established by, under and pursuant to the authority of the aforesaid Acts of Congress of 1807 and 1895, as amended, all as set forth in paragraphs 9 and 10 above.

12.

The said defendants above-named, well knowing of Louisiana's title to and ownership of said submerged lands and natural resources and of its possession and control thereof, within the said historic boundary three leagues from coast have nevertheless combined, confederated and conspired to trespass upon and slander plaintiff's title to the said property and to deprive the plaintiff of its possession thereof as will be hereinafter shown.

13.

The said corporate defendants named in paragraph 2 of this petition with full knowledge of Louisiana's title to and ownership of said lands and resources have requested the defendant Edward Woozley to advertise said lands for lease to interested parties so that the said corporate defendants might bid therefor and secure leases thereon for exploitation, development and pro-

duction of oil, gas and other minerals under the pretext that the said lands belong to the United States when they well know, and are charged with knowing that the said submerged lands and natural resources belong to the State of Louisiana.

Pursuant to the said unlawful combination and conspiracy to slander the title of the State of Louisiana of said lands and to trespass upon the same to the irreparable damage and injury to the plaintiff, the said defendant Edward Woozley on Saturday March 17, 1956, published a notice in the Federal Register at pages 1702 et seq. requesting sealed bids addressed to the Manager, Outer Continental Shelf Office, Bureau of Land Management, in New Orleans, Louisiana, namely, the defendant Sidney Groom, for the lease of certain areas adjacent to and within the territorial waters and submerged lands of the State of Louisiana totaling approximately 355,000 acres, as will appear from a copy of the Federal Register under date of Saturday, March 17, 1956, attached hereto and made a part hereof. Said notice calls attention to the fact that certain tracts "are limited by the line that marks the seaward boundary of the State of Louisiana, as established by the Submerged Lands Act of May 22, 1953 (67 Stat. 29: 43 U. S. C. 1312) and, that pending final determination of the position of the boundary, the acreage shown in the notice will be administratively considered to be the acreage situated on the "Outer Continental Shelf". But said defendant thereby contends that, although the boundary of the State of Louisiana is not known, the lands covered by the notice and lying within the territorial waters and submerged lands of the

State will nevertheless be offered for lease for oil, gas and other minerals.

14.

Plaintiff now shows that the defendant Sidney Groom in furtherance of said combination and conspiracy to deprive the State of Louisiana of its lands and minerals and to slander its title thereto will, unless restrained by this Court, proceed to receive bids addressed to him at his office in New Orleans, Louisiana and will open bids therefor on May 15, 1956, in the Claiborne Room of the St. Charles Hotel, New Orleans, Louisiana, in accordance with the said notice and advertisement of the Federal Register referred to hereinabove, and acting under the supervision of the defendant Edward Woozley will deliver bids made by said corporate defendants to said Woozley who will award leases to the corporate defendants named in paragraph 2 above for recordation and for drilling operations to the damage and injury to the State of Louisiana, unless restrained by this Honorable Court. In this connection petitioner shows that a substantial portion of said lands and minerals lie in Cameron Parish and within the jurisdiction of this Honorable Court.

15.

The said defendants, without any statutory authority whatever, and in violation of the positive enactments of Congress and of the legal rights of plaintiff are seeking to invade and take property and property rights and natural resources belonging to the State of Louisiana, and

unless restrained by this Court, will, pursuant to said advertisement made by them, receive bids on said property and will, on May 15, 1956, award leases to acceptable bidders therefor, which said bidders will thereafter proceed to drill, produce and transport off of said properties oil, gas and other minerals belonging to the State of Louisiana to its irreparable damage and injury.

16.

The aforesaid acts of the said defendants in procuring the advertisement of, and in advertising plaintiff's properties within its inland waters and inside its historic boundary three leagues from coast in the Gulf of Mexico for lease for the production of oil, gas and other minerals and in trespassing upon and slandering plaintiff's title thereto has cast such a cloud upon plaintiff's title to said properties that plaintiff has been unable to and will be unable to make leases of the said properties which said damages cannot be measured in terms of money, and the plaintiff has suffered and will continue to suffer irreparable loss, harm and injury thereby.

17.

Not only have said individual defendants, Edward Woozley and Sidney Groom tortiously and unlawfully slandered and clouded plaintiff's title to and ownership of said properties by advertising said lands for mineral development in conspiracy with said corporate defendants, as aforesaid, but in furtherance of their plan and design unlawfully to deprive the State of Louisiana of its sub-

merged lands and natural resources as recognized and quitclaimed by the Submerged Lands Act of Congress, and to cause the State of Louisiana irreparable harm, loss, damage and injury they have also widely publicized and published ominous threats that they will take legal action against any corporation, firm or individual who may lease from the State of Louisiana, and who may take possession of any submerged lands extending more than three miles from Louisiana's shoreline pursuant to lease agreements which the State desires and expects to make covering said properties. Said threats have already caused and if continued or carried out, will continue to cause great and irreparable harm to plaintiff and has made and will continue to make it impractical if not impossible for plaintiff to lease and develop its submerged lands within its inland waters and inside its historic boundary three leagues from coast in the Gulf of Mexico.

18.

Unless restrained by writs of injunction issued by this Court, defendants without any legal right so to do will continue to offer said submerged lands belonging to the plaintiff for leasing and mineral development and will continue to make threats against lessees and prospective lessees of the State of Louisiana to its irreparable harm, loss, damage and injury as aforesaid.

19.

The aforesaid unlawful combination and conspiracy between said defendants to slander

Louisiana's title to its said properties, to trespass thereon and to unlawfully lease the same for mineral development and take minerals therefrom has been going on for twelve months or more, and pursuant thereto the individual defendants Edward Woozley and Sidney Groom did on and prior to July 12, 1955, offer for lease more than 283,000 acres of submerged lands belonging to plaintiff in the said area three leagues from its coast line for exploitation and development for oil as a result of previous plans and arrangements made by them with the corporate defendants herein named; and through such unlawful combination the said corporate defendants did secure said leases on the false pretext that said lands belonged to the United States when they had been previously notified by State officials, and well knew that the same were claimed by, and belong to, the State of Louisiana. Said corporate defendants offered joint bids for many of said leases pursuant to said unlawful combination and conspiracy, and plan to jointly bid for leases which the individual defendants will offer on May 16, 1956. Petitioner has through its State Mineral Board made protest to the individual defendants against the leasing and offering for lease of lands belonging to Louisiana prior to the offering, or public bidding, on July 12, 1955, and has recently made a similar protest against the lease offerings scheduled for May 15, 1956. Said protests were given wide publicity in the National and State Press and are well known to said corporate defendants. The said corporate defendants, unless restrained by this Court will proceed to take oil, gas and other

minerals from said property to the irreparable injury of plaintiff. As a result of said actions of the defendants, plaintiff has been unable to secure bids for leases on its said properties, although it has advertised the same and endeavored to secure bidders therefor. Plaintiff has thereby suffered a loss of revenues which cannot be measured or estimated in money.

20.

The threatened irreparable damage and injury to plaintiff is immediate and imminent, and in order to protect plaintiff's rights in the premises until a hearing of this cause can be had and the issues determined by this Court, a temporary restraining order should be issued against the said individual defendants enjoining them from proceeding further with the advertisement of said properties for mineral leasing and development and from awarding such leases to any acceptable bidders as the defendants propose to do on May 15, 1956, and enjoining and prohibiting the said corporate defendants from bidding or offering bids for, and from entering into any purported mineral leasing contracts with said personal defendants as purported agents acting in violation of law, and also from entering upon the lands described in said advertisement within the boundary of the State of Louisiana for purported mineral leasing or for the purposes therein contemplated, or for any other related and unauthorized purposes, except with the permission and agreement of plaintiff, the State of Louisiana, as owner of said submerged lands and mineral resources.

21.

Petitioner annexes hereto and makes part hereof the affidavits of Honorable Fred S. LeBlanc, Attorney General of the State of Louisiana, and C. J. Bonnecarrere, Secretary of the Mineral Board of the State of Louisiana, as supporting proof of the facts hereinabove alleged and in verification of this petition.

22.

The defendant Edward Woozley is a non-resident of the State of Louisiana and it is necessary that a curator ad hoc be appointed to represent him in these proceedings.

WHEREFORE, plaintiff prays that a temporary restraining order issue herein immediately, and before a hearing, enjoining, restraining and prohibiting the defendants named in the foregoing petition, and any and all persons acting by, through or under them; or any of them from disturbing plaintiff's possession, enjoyment and administration of the submerged lands and natural resources and property rights described in this petition, or slandering plaintiff's title thereto, and restraining and prohibiting the individual defendants from offering for lease said submerged lands and natural resources within Louisiana's historic boundary three leagues from coast in the Gulf of Mexico or from receiving, accepting, opening, or awarding bids for leasing same for the development and production of minerals, and from further threatening plaintiff's lessees from going upon said submerged lands and operating

to develop the same, and enjoining and prohibiting the said corporate defendants from bidding or offering bids for, and from entering into any purported mineral leasing contracts with said personal defendants as purported agents acting in violation of law; and also from entering upon the lands described in said advertisement within the boundary of the State of Louisiana for purported mineral leasing or for the purposes therein contemplated, or for any other related and unauthorized purposes, except with the permission and agreement of plaintiff, the State of Louisiana, as owner of said submerged lands and mineral resources.

Plaintiff further prays that the said defendants be ordered to show cause on a day to be fixed by this Honorable Court why a preliminary injunction should not issue herein, enjoining, restraining and prohibiting them and any and all persons acting by, through or under them from doing any of the acts and things described and set forth in the preceding paragraph.

Plaintiff further prays that a curator ad hoc be appointed to represent the absent defendant Edward Woozley and that the defendants and said curator be duly cited to appear and answer this petition, and that after due proceedings had there be judgment herein in favor of the plaintiff, the State of Louisiana, and against the defendants herein named recognizing plaintiff's right of ownership, possession, administration and jurisdiction to the submerged lands and natural resources and property rights described in this petition and lying within its historic boundary,

three marine leagues from coast in the Gulf of Mexico, as recognized and quitclaimed to plaintiff by the Submerged Lands Act of Congress of May 22, 1953, 67 Stat. 29, 43 U. S. C. 1312; that in due course a permanent injunction be issued herein restraining and enjoining the said defendants, their officers, agents, servants and employees from trespassing on, or slandering the title to, or interfering in any manner with the plaintiff's right of ownership, possession, administration and jurisdiction of the submerged lands and natural resources and property rights described herein, and from further advertising the same for mineral leasing and from leasing or offering to lease the same for development and production of minerals.

Plaintiff further prays for all orders and decrees necessary and for full and general relief.

FRED S. LEBLANC,
Attorney General, State of Louisiana.
JACK P. F. GREMILLION,
Attorney General-Elect,
Special Assistant Attorney General.
EDWARD M. CARMOUCHE,
Special Assistant Attorney General.
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Assistant Attorney General.

APPENDIX B

14th Judicial District Court, Parish of Calcasieu

No. 38780

STATE OF LOUISIANA

vs.

ANDERSON-PRICHARD OIL CORPORATION, ET AL.

TEMPORARY RESTRAINING ORDER

The Court considering the verified petition of the State of Louisiana, Plaintiff, and evidence submitted in support thereof, that said State is the holder and owner of the fee simple title to the submerged lands and natural resources lying within and extending 3 leagues seaward from its coast line into the Gulf of Mexico, and the exercise by said State of exclusive ownership, possession, use and administration of said lands and natural resources continuously since said State was admitted into the Union by Act of Congress of April 8, 1812; that said coast line or outer boundary of its inland waters was designated by the agency of the federal government authorized by the Acts of Congress of February 10, 1807 and February 19, 1895, and that the defendants, well knowing of Louisiana's title to and ownership of Louisiana's submerged lands and natural resources and of its possession and administration thereof within its said boundary, have,

nevertheless, unlawfully conspired to deprive the State of said lands and resources and have pursuant thereto, trespassed upon and slandered plaintiff's title to its said property by leasing more than 283,000 acres and said Edward Woozley and Sidney Groom are offering to lease to any interested parties by public advertisements approximately 355,000 additional acres of said submerged lands for exploitation, development and production of minerals therefrom, all without statutory authority and in violation of the positive enactments of Congress on the subject and of the legal rights of plaintiff, and that said defendants, Edward Woozley and Sidney Groom, have further publicly threatened legal action against any person, firm or corporation who may lease said submerged lands from the State of Louisiana and who may take possession thereof under said leases, all to the great and irreparable harm, loss, damage and injury to the said State and that such irreparable harm and injury is imminent due to the fact that said defendants' proposed leasing of said submerged lands is scheduled to take place on May 15, 1956, and there is insufficient time for a hearing on plaintiff's complaint and application for injunction herein;

THEREFORE:

IT IS ORDERED that a temporary restraining order issue forthwith, restraining and prohibiting the defendants, Edward Woozley and Sidney Groom, and any and all persons acting by, through or under them, or either of them from disturbing the State of Louisiana's possession, use, enjoyment

and administration of said submerged lands and natural resources within its said alleged historic gulfward boundary 3 leagues from said coast line into the Gulf of Mexico and from advertising and offering for leasing, receiving, forwarding, or accepting bids for leases, or from leasing said submerged lands and natural resources, and from further threatening plaintiff's lessees, pending the further orders of this Court.

IT IS FURTHER ORDERED that a temporary restraining order issue, forthwith, restraining and prohibiting the defendants, Anderson-Prichard Oil Corporation, The California Oil Co., Continental Oil Co., Cities Service Production Co., Atlantic Refining Co., Tidewater Associated Oil Co., Forest Oil Corporation, Gulf Refining Company, Humble Oil & Refining Co., Hunt Oil Company, Kerr-McGee Oil Ind. Inc., Magnolia Petroleum Co., The Ohio Oil Co., Pan-American Production Co., Phillips Offshore Oil Co., Placid Oil Company, the Pure Oil Company, Seaboard Oil Company, Shell Oil Company, Sinclair Oil & Gas Co., Stanolind Oil & Gas Co., The Superior Oil Co., Sun Oil Company, The Texas Company, and Union Oil Company of California, their officers, agents, attorneys and employees, and any and all persons acting by, through, or under them, or any of them, from bidding for, receiving or accepting leases on said submerged lands and natural resources within the alleged historic boundaries of the State of Louisiana three leagues or 10.36 miles, from its coast line to the Gulf of Mexico, or from going on said lands or conducting drilling operations thereon for the

discovery or production of minerals, or slandering the title of the State of Louisiana thereto, or disturbing in any way the State of Louisiana's title, possession, use, enjoyment and administration thereof without its consent.

IT IS FURTHER ORDERED that W. W. Bell, Jr., an Attorney at Law, of Lake Charles, Louisiana, be and he is appointed Curator ad Hoc to represent the absent defendant, Edward Woozley.

IT IS FURTHER ORDERED that a rule be issued to said defendants, and to said Woozley through said Curator ad Hoc and that they be required on May 16th, 1956, 10:00 A. M., to answer this complaint and to show cause why a preliminary injunction should not be issued as above, and as prayed for in plaintiff's petition herein.

Done and signed on this 11th day of May, 1956.

MARK C. PICKREL, *Judge.*

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In the Supreme Court of the United States

OCTOBER TERM, 1955

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

MEMORANDUM FOR THE UNITED STATES ON MAINTENANCE OF STATUS QUO

HERBERT BROWNELL, JR.,
Attorney General,
SIMON E. SOBELOFF,
Solicitor General,
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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 15, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

MEMORANDUM FOR THE UNITED STATES ON MAINTENANCE OF STATUS QUO

Responding to the invitation of the Court for an expression of views, the United States submits that it is most important that the development of the submerged coastal lands continue without interruption during the period of litigation in this Court, under an agreement of the parties to escrow receipts, if possible, but that it continue in any event. It would be highly desirable for the United States and Louisiana to enter into a stipulation under which bonuses, royalties, and all other funds received from leasing lands in the disputed area should be held in a fund for later division between the parties in accordance with the decision of this case on its merits. In

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the absence of such an agreement, the United States does not believe that the area can be allowed to lie idle without great damage to the public welfare and to lessees who have invested hundreds of millions; the parties should proceed to lease the properties and collect royalties as best they can, awaiting the outcome of the suit to determine the appropriate distribution of the proceeds.

The total area in dispute comprises nearly 5,000,000 acres extending along the entire coast of the State of Louisiana. In addition to the instant dispute over whether Louisiana's marginal belt is three miles or three leagues in width, there is disagreement on the location of the base line from which the belt is measured. The base line for the marginal sea lies along the outer limit of inland waters and Louisiana claims as inland waters vast stretches which the United States believes to be open sea, so that Louisiana builds its three league claim on the foundation of an inland water claim that extends far into the Gulf of Mexico. This disputed area is the potential source of millions of barrels of oil and comparable quantities of gas which are highly important to the Nation's reserves.[1] It has been the scene of widespread geophysical exploration and extensive drilling. Over 22,310 barrels of petroleum and 246,872,000 cubic feet of natural

[1] 16,627,000 barrels of oil and 240,000,000,000 cubic feet of gas have already been withdrawn. There are also very large deposits of sulphur.

gas are being produced daily in the area. The United States has confirmed leases previously issued by Louisiana covering 855,650 acres in the disputed area and has issued new leases on 177,830 acres in this area, over 1,000,000 acres in all on which 456 wells have been, or are being, drilled.

In oil and gas production it is not practicable, without incurring great loss, to shut down operations entirely or to interrupt the development of a productive area. If closed down, producing wells may sand up and lose their capacity to produce. Investment in wells being drilled may be lost if the drilling is interrupted.[2] By their terms leases which were acquired after extensive geophysical exploration and by the payment of large bonuses will expire unless they are developed. It is not possible to permit production of oil from one lease and at the same time to hold adjoining areas for later development without causing oil to be drained from the undeveloped lands. What is more a lessee, having determined that a structure is favorable for drilling, hesitates to drill if it cannot acquire adjacent properties since his drilling will tend to prove the entire structure and redound to the benefit of the adjoining property. Thus development of existing leases would be impeded by the inability

[2] The cost of drilling an exploratory well in the submerged lands area averages about $1,000,000, of a development well, about $600,000.

to lease additional areas. All of these factors make it highly desirable to continue operations in the area with as little interference as is possible. Obviously it would be financially disastrous to existing lessees for their production and drilling activity to be suspended, and the United States as lessor would suffer a part of that loss. The extent of that injury is difficult to estimate but the investment to date in the area amounts to hundreds of millions. Less obvious, but no less real, would be the result of a cessation of leasing. In view of the size of the area and the length of time which may be consumed in litigation, perhaps the most serious injury would be the impairment to the development of adequate national oil reserves. Congress has recognized "the urgent need for further exploration and development of the oil and gas deposits of the submerged lands of the outer Continental Shelf" in Section 8 of the Outer Continental Shelf Lands Act (43 U. S. C. Supp. II, 1337 (a)) and vested authority in the Secretary of Interior to promote such activity.

There is precedent for using a stipulation to protect the interests of the contending parties without interrupting actual operations in the field. After this Court's decision in *United States* v. *California*, 332 U. S. 19, a dispute arose between the United States and California as to the extent of the latter's inland waters, which, of course, continued to be subject to leasing by the

state. On July 26, 1947, the United States and California entered into a stipulation to permit the continuation of operations and new drilling and leasing under certain restrictions, but requiring the receipts to be held in escrow. This agreement was extended with certain revisions from year to year while the parties carried on their litigation. After the passage of the Submerged Lands Act and this Court's decision upholding its constitutionality in *Alabama* v. *Texas*, 347 U. S. 272, the United States paid about $22,000,000 to California in 1954.

In September of 1954, after the passage of the Submerged Lands Act of May 22, 1953, and the Outer Continental Shelf Lands Act of August 7, 1953, a meeting was held in Washington attended by the representatives of Louisiana and of the Departments of Justice and Interior. At that time the dispute between Louisiana and the United States had arisen and both Louisiana and the United States were making competing offers for the sale of leases in the same area. It was agreed at this meeting that it was best to avoid the confusion of the competing offerings, and both the State and the United States withdrew the overlapping offerings in the disputed area; a committee was set up to work out an operating program which would permit continued development of the area pending a determination of the location of the boundary. It was then understood that the future leasing should be done by the

Federal Government, if a suitable agreement would be reached, and that the funds resulting from the leasing should be held in escrow. Unfortunately this attempt to reach an agreement with the State failed, the State explaining that it had no authority under its law to permit the funds to be held in escrow.

In the absence of agreement, the Secretary of the Interior proceeded to carry out what he conceived to be his duties under the Outer Continental Shelf Lands Act, offering for lease in July, 1955, properties a portion of which lay in the disputed area. The State then published notice of an offering set for the same day and hour as the Federal offering and including some of the identical properties. After the State failed in an attempt to enjoin the Secretary of Interior in the United States District Court for the District of Columbia, the sales were held. No bids were received by Louisiana on the disputed properties. A large number of the tracts were bid for in the Federal sale and leases were issued therefor. The State has made other attempts to lease in the disputed area, with little success.

Finally the Secretary of Interior made an offering of additional leases on the disputed area, bids to be received on May 15, 1956. It was this sale which Lousiana restrained in the State court action referred to in the motion for an injunction filed by the United States in this Court. Appen-

dix A and B to Motion.[1] As a result of that action the sale has been postponed.

CONCLUSION

The United States submits that any attempt to maintain the status quo by a cessation of production, drilling, or leasing in the disputed area would not only jeopardize the national interest in the development of adequate reserves, but would result in tremendous financial losses to lessees, many of whom originally obtained their leases from the State of Louisiana. Moreover, such drastic action is not necessary. The United States stands ready and willing to enter into an agreement with Louisiana to hold all proceeds of leasing in the disputed area in escrow pending a determination of the case on its merits.

Respectfully submitted,

HERBERT BROWNELL, JR.,
Attorney General.

SIMON E. SOBELOFF,
Solicitor General.

J. LEE RANKIN,
Assistant Attorney General.

JUNE, 1956.

[1] It should be particularly noted that the restraining order issued by the State court goes further than maintaining the status quo. It also restrains operations in that area under existing leases, both the State leases which were confirmed and became federal leases under the Outer Continental Shelf Lands Act and the new federal leases sold in 1955. Most of the area now under development was originally leased by Louisiana (see *supra*).

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955 8

UNITED STATES OF AMERICA, *Plaintiff*

v.

STATE OF LOUISIANA

MOTION TO DISMISS, AND DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR INJUNCTION, WITH SUPPORTING BRIEF

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 15, Original

UNITED STATES OF AMERICA, *Plaintiff*

v.

STATE OF LOUISIANA

MOTION TO DISMISS, AND DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR INJUNCTION

Now comes the State of Louisiana, defendant herein, through its Attorney General, without abandoning but re-asserting and reserving all rights under its objections to the filing of the complaint herein and reserving its right to move to dismiss the entire proceeding on jurisdictional grounds; and without in any manner consenting to be sued, or submitting itself voluntarily to the jurisdiction of this Court, moves the Court to dismiss plaintiff's motion for an injunction for the reason that the plaintiff has failed to comply with the provisions of Rule 31 of the Supreme Court Rules, in that no motion for leave to file this proceeding has been obtained from the Court.

In the event that this motion to dismiss be overruled, defendant opposes plaintiff's motion for an injunction herein on the following grounds:

First Defense

Defendant denies each and every allegation in the motion for injunction except as may be hereinafter admitted:

I

It is admitted that a decree was entered on December 11, 1950, in the case of *United States* v. *Louisiana*, 340 U.S. 899, by this Court, which decree speaks for itself, but defendant shows that the effect of said decree has been nullified and the decree has been superseded by the provisions of Public Law 31 of the 83rd Congress, known as the Submerged Lands Act, enacted May 22, 1953, 67 Stat. 29, 43 USC 1301, et seq.

II

Paragraph II of the complaint is denied as written, and the defendant avers that in the Submerged Lands Act Congress recognized the fact that the United States had no right, title or interest in the lands, minerals and other things underlying the Gulf of Mexico, and in Section 3 of said Act (67 Stat. 30, 43 USC 1311) released and relinquished "all right, title and interest of the United States, *if any it has,* in and to said lands, improvements, and natural resources."

The legislative history of the Submerged Lands Act and the reports of the Committees of Congress relating thereto specifically state that throughout the history of this Nation the respective States have been recognized and acknowledged to be the sovereign owners

of the land beneath navigable waters within their boundaries, including the marginal seas, and of the natural resources within such lands and waters (US Congressional & Administrative News, 83rd Congress, 1st Session, 1953, Vol. 2, pp. 1398-9, 1409-10, 1417, 1419, 1428-30, 1481, 1507-8, 1517-19).

III

Paragraph III as written is denied and defendant shows that the State of Louisiana claims that the Submerged Lands Act has recognized Louisiana's historical title to submerged lands lying three leagues seaward from its coast. On December 19, 1955, the United States applied to this Court for leave to file its complaint as against the State of Louisiana "declaring its rights in lands, minerals and other things underlying the Gulf of Mexico lying more than three geographic miles seaward from the ordinary low water mark and from the outer limit of inland waters on the coast of Louisiana and extending seaward to the edge of the Continental Shelf" as will more fully appear from the complaint filed herein. It is admitted that on March 26, 1956 the Court granted leave to file said complaint and required defendant to respond thereto within thirty days.

IV

Paragraph IV is admitted except that defendant shows that it has an extension of time within which to plead or respond to said complaint until June 25, 1956.

V

Paragraph V as written is denied, and defendant avers that officials of the Interior Department, acting

beyond and in violation of statutory authority have issued oil and gas leases on submerged lands lying three miles off shore as well as on submerged lands lying within three marine leagues of Louisiana's coast, said lands having been leased against the protest of the defendant. In making said leases, the said officers and agents of the Interior Department have acted without any statutory authority and in violation of the positive enactments of Congress and of the legal rights of the plaintiff, and have invaded and trespassed upon property and property rights belonging to the State of Louisiana, which said actions the State of Louisiana has restrained by order of Court, as hereinafter shown.

VI

It is admitted that the State of Louisiana has filed suit in the Fourteenth Judicial District Court against Edward Woozley and Sidney Groom as alleged in this paragraph, the allegations of said petition being copied in Appendix A of plaintiff's motion and brief, but defendant avers that said petition was amended by omitting from the prayer thereof any request for a declaration as to the title of the State of Louisiana for the properties involved. Defendant shows that the said petition in the State Court as amended sets forth a cause of action between different parties, involving a different cause of action, and a different prayer for relief from that sought by the United States in its original complaint herein; that the parties and causes of action are not the same and there is no inconsistency in the State Court or United States District Court for the Western District of Louisiana to which said proceeding has been removed, from proceeding to a final determination of the issues involved. The latter state-

ment is made without admission on the part of the State of Louisiana that its suit in the District Court of Calcasieu Parish, Louisiana has been properly removed to the United States District Court.

VII

This paragraph is denied as written. It is admitted that the United States has attempted to remove the cause pending in the State Court to the United States District Court for the Western District of Louisiana, that the latter Court has ordered a partial remand to the State Court insofar as the defendants Edward Woozley and Sidney Groom are concerned, and that United States has petitioned for a rehearing on this order which matter is now pending the United States District Court. In this connection defendant shows that the position of the United States here is utterly inconsistent with the averments of the petition to remove the State suit to the United States District Court. The allegations made there that the said Court has original jurisdiction over, and should hear said cause, are contradictory to the claim now made that an injunction is necessary to preserve the jurisdiction of this Court. Further answering, defendant shows that on May 14, 1956, the United States filed a petition in the United States District Court for the Western District of Louisiana for an injunction to restrain the State of Louisiana from proceeding further with its said Suit #38780 on the Docket of the 14th Judicial District Court of Calcasieu, said petition setting forth the grounds now urged in this Court, and said proceeding was dismissed and the relief prayed for denied by Judgment of the United States District Court on May 14, 1956. Defendant now pleads said Judgment as res adjudicata of the issues here presented.

VIII

The allegations of paragraph VIII are denied. The defendant denies that it is attempting to circumvent the jurisdiction of this Court and avers that the proceeding in the State Court does not involve the same questions, is not based on the same laws and does not seek the same relief which is being sought in this Court. Defendant shows that the State Court does not interfere with the conduct of the said officials of the United States in the performance of their duties, but seeks to restrain and enjoin them from conspiring to trespass upon and slander the title and disturb the possession of the State of Louisiana to properties which are in its possession under the claim of ownership, and have been so possessed by the State from time immemorial. The defendant shows that the said restraint and injunctive process will not work any irreparable injury to the United States, but will maintain the status quo until the issues presented by the original complaint in this proceeding have been finally adjudicated and determined.

Second Defense

If the Plaintiff's motion for injunction is made for the purpose of approving or ratifying the tortious and unlawful acts of officers and agents in trespassing on lands possessed by the State of Louisiana under claim of title, then plaintiffs comes into a court of equity with unclean hands and should be denied relief. Plaintiff cannot in good faith petition this Court to declare its rights and title in the submerged lands off the coast of Louisiana, and then proceed through its officers and agents to trespass upon and lease for mineral development the very lands concerning which it has requested this Court's adjudication.

Third Defense

The rule of comity between Courts prevents this Court from interfering with the proceedings of the Courts of the State, and this rule is a principle of fundamental right and law based upon necessity, whether the plaintiff be sovereign or citizen. In the absence of a seizure of these properties or custody thereof by this Court there is no valid reason for restraint against proceedings in the State Court relating to the same subject matter.

Fourth Defense

There is no inconsistency between the action of boundary filed by the Government in this Court, and the possessory action filed pursuant to State Statutes in the Louisiana Court, and the restraining order and injunction sought in the State Court can in no way prejudice the rights of the United States in the final determination of its boundary suit. Maintenance of the status quo by State Court injunction can in no way interfere with the jurisdiction of this Court, but will on the contrary be consistent therewith.

Fifth Defense

Plaintiff can suffer no injury by refraining to lease the lands in dispute for mineral development. There is no allegation on the part of plaintiff that such lands are being leased by the State of Louisiana nor is there any claim that the minerals thereunder are being taken or drained from said lands by State lessees or anyone else. Said minerals have been on deposit for millions of years and will stay where they are until the dispute as to their ownership is finally determined.

WHEREFORE the State of Louisiana prays that this opposition to plaintiff's motion for injunction be maintained and that plaintiff's motion be rejected and denied.

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State of Louisiana

JOHN L. MADDEN
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State of Louisiana

W. SCOTT WILKINSON
Special Counsel
State of Louisiana

BAILEY WALSH
Special Counsel
State of Louisiana

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

UNITED STATES OF AMERICA, *Plaintiff*

v.

STATE OF LOUISIANA

BRIEF OF THE STATE OF LOUISIANA IN OPPOSITION TO MOTION FOR INJUNCTION

Preliminary Statement

The original complaint in this case was brought by the United States for the purpose of securing a declaration as to its rights against the State of Louisiana in lands, minerals, and other things underlying the Gulf of Mexico lying more than three geographical miles seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Louisiana. The complaint alleges that a dispute exists between the United States and the State of Louisiana as to the boundaries between the submerged lands off the cost of Louisiana belonging to the State, and those claimed by the United States under the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U.S.C. (Supp. II) 1331-1343. The original complaint also seeks an injunction against the State

of Louisiana from interfering with the rights of the United States in the properties to which its title might be recognized, and for an accounting of all sums of money received by the State from submerged lands belonging to the United States. The principal demand in the original complaint is, therefore, one for the determination of boundaries, and this is coupled with an incidental demand for an injunction and an accounting.

None of the properties in question have been seized by any process issued by this court. This court, therefore, does not have possession of the *res*. The original complaint was served upon the State of Louisiana through its Attorney General.

After having thus tendered to this court the question as to the boundaries between the State of Louisiana and the United States, officials of the federal government proceeded to disregard the complaint and to decide the issue administratively. Officers and agents of the Department of the Interior have, notwithstanding the dispute submitted to this court, proceeded to lease and to offer for lease offshore lands both within and beyond the area lying within three miles of Louisiana's mainland shores. By reason of this lack of good faith on the part of the federal officials, and their utter disregard of the property rights of the State of Louisiana, the latter brought suit in the Fourteenth Judicial District Court of Calcasieu Parish, Louisiana, alleging that these federal officials, while knowing Louisiana's claim to, and possession of these lands from time immemorial, and over the written protest of the State of Louisiana have proceeded to lease and to advertise lands for lease which belong to and are in the possession of the State of

Louisiana. The State alleges that these officials have unlawfully combined and conspired with the officers and agents of various oil companies to slander the title of the State and to trespass upon lands in its possession to its irreparable damage and injury. It is also alleged that the said federal officials, without any statutory authority whatever and in violation of the positive enactments of Congress and of the legal rights of the State of Louisiana are seeking to invade and take property and property rights and natural resources belonging to the State and in its possession, said properties lying inside the historic boundaries of the State, three leagues from the coast in the Gulf of Mexico. The original petition of the State of Louisiana is copied in Appendix A to the government's motion and brief, and the restraining order issued by the State judge against Edward Woozley and Sidney Groom, individual defendants, is set forth in Appendix B to the government's motion for injunction and brief in support thereof.

While the original petition in the State court prayed for a declaration as to Louisiana's title and rights in said lands, an amended petition was filed on May 21, 1956, in the State court and in the United States District Court eliminating any question as to title to said lands. A copy of the amended petition is contained in the appendix to this brief.

The differences between the original complaint in this court and the petition in the State court are obvious. The complaint in the Federal court is brought by the United States whereas the defendants in the State court are individuals. The United States is not a party to the State's suit, and is not a necessary party as will be hereinafter shown.

The complaint in this court seeks a declaration as to boundaries and is essentially a boundary action. The petition in the State court is an action sounding in tort, and no question as to boundary or title is involved.

The complaint in this court is based upon certain acts of the United States Congress—the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. (Supp. II), 1301-1315, and the Outer Continental Shelf Lands Act, supra. The State proceeding is a possessory action in which Louisiania seeks to protect its possession of the properties in question, it is based upon the following articles of the Code of Practice of Louisiana:

> 46. "*Basis of action.*—The possessory action, which is a branch of real actions, may be brought by any possessor of a real estate, or of a real right, who is disturbed either in the possession of the estate or in the enjoyment of the right, against him who causes the disturbance, in order to be maintained in, or restored to the possession, whether he has been evicted or disturbed; provided his possession be accompanied by the qualifications hereafter required.
>
> 50. *Kinds of disturbance.*—The disturbance which gives rise to the possessory action may be of two kinds; disturbance in fact, or disturbance in law.
>
> 51. *'Disturbance in fact' defined.*—Disturbance in fact occurs when one, by any act, prevents the possessor of a real estate, or of a right growing from such an estate from enjoying the same quietly, or throws any obstacle in the way of that enjoyment, or evicts him through violence, or otherwise.
>
> 52. *'Disturbance in law' defined—Demand insufficient.*—Disturbance in law takes place when

one, pretending to be the possessor of a real estate, says that he is disturbed by the real possessor, and brings against the latter the possessory action; for in such a case the true possessor is disturbed by this action, and may also bring a possessory action, in order to be quieted in his possession.'

53. *Proof of possession and disturbance thereof.* —The plaintiff in a possessory action needs only, in order to make out his case, to prove that he was in possession of the property in question, in the manner required by this Code, and that he has been either disturbed or evicted within the year previous to his suit.''

In a possessory action against trespassers, under the Louisiana Code, one who has had quiet possession as owner for a year or more is entitled to be quieted in such possession, and the question of title is in no way involved.

Siegel v. *Hellis,* 186 La. 506, 172 So. 768;
Ware v. *Baucum,* 221 La. 259, 59 So. 2d 182;
Grant Timber & Mfg. Co. v. *Gray,* 131 La. 865, 60 So. 374;
Smith v. *Grant Timber & Mfg. Co.,* 130 La. 471, 58 So. 153;
Producers Oil Co. v. *Hanszen,* 132 La. 691, 61 So. 754;
Moran v. *New Orleans,* 170 La. 499, 128 So. 290.

It therefore follows that the action pending in this court does not involve the same parties, the same issues, or the same relief, and neither action is inconsistent with the other. Both are actions in personam, and neither this court nor the State court has custody or possession of the property in dispute.

State Proceeding is Not a Suit Against the United States

Two officials of the United States Government are defendants in the State court. They are Edward Woozley, Director of the Bureau of Land Management of the Department of the Interior, residing in Washington, D. C., and Sidney Groom, who is the District Manager of the Bureau of Land Management, and resides in New Orleans. A suit of this kind against these officials to enjoin them from exceeding their authority and committing a tort against the State of Louisiana is not a suit against the United States. The following text of 91 C.J.S. 409 is applicable to this situation.

> "The sovereign immunity of the United States from suit without its consent does not extend to its officers or agents; an action against an official or agency of the United States is not necessarily a suit against the United States. Where defendant's conduct is such as to create a personal liability, the fact that defendant is an officer of the United States does not forbid a court from taking jurisdiction of a suit against him. The exemption of the United States from suit does not protect its officers and agents from injunctive process to prohibit a threatened wrongful invasion of property rights."

Numerous decisions of the Supreme Court and of the Federal Courts, in support of the foregoing text are found in the notes and will be quoted from hereafter. The text then goes on to say:

> * * * "Where the officer's powers are limited, his actions beyond those limitations are considered individual and not sovereign actions, and a suit for specific relief with respect to such actions is not necessarily a suit against the United States." (91 C.J.S. 412)

In the case of *Land* v. *Dollar*, 67 S. Ct. 1009, 330 U.S. 731, 91 L. Ed. 1209, the Supreme Court held that in a suit against the officers of the United States where the right to possession or enjoyment to property under general law is in issue, the fact that defendants claim as officers or agents of the United States does not make the action one against the Federal Government. In that case the Court said:

> "If respondents are right in these contentions, their claim rests on their right under general law to recover possession of specific property wrongfully withheld. * * *
>
> If viewed in that posture, the case is very close to United States v. Lee, 106 U.S. 196, 27 L. Ed. 171, 1 S. Ct. 240. * * * That rule is applicable here although we assume that record title to the shares is in the Commission. In United States v. Lee, 106 U.S. 196, 27 L. Ed. 171, 1 S. Ct. 240, supra, record title of the land was in the United States and its officers were in possession. The force of the decree in that case was to grant possession to the private claimant. Though the judgment was not res judicata against the United States, p. 222, it settled as between the parties the controversy over possession. Precisely the same will be true here, if we assume the allegations of the complaint are proved. For if we view the case in its posture before the District Court, petitioners, being members of the Commission were in position to restore possession of the shares which they unlawfully held.
>
> * * * But public officials may become tortfeasors by exceeding the limits of their authority, and where they unlawfully seize or hold a citizen's realty or chattels, recoverable by appropriate action at law or in equity, he is not relegated to the Court of Claims to recover a money judgment. The dominant interest of the

sovereign is then on the side of the victim who may bring his possessory action to reclaim that which is wrongfully withheld."

The foregoing case makes a distinction between those cases where plaintiff seeks to be decreed as owner of title to the property and the case where he seeks to be quieted in his possession thereof.

The case of *Philadelphia Co.* v. *Stimson*, 32 S. Ct. 340, 223 U.S. 605, 56 L. Ed. 570, is also applicable to the situation presented here. In that case, Mr. Justice Hughes, as the organ of the Court, said:

"If the conduct of the defendant constitutes an unwarrantable interference with property of the complainant, its resort to equity for protection is not to be defeated upon the ground that the suit is one against the United States. The exemption of the United States from suit does not protect its officers from personal liability to persons whose rights of property they have wrongfully invaded. Little v. Barreme, 2 Cranch, 170, 2 L. Ed. 243; United States v. Lee, 106 US 196, 220, 221, 27 L. Ed. 171, 181, 182, 1 Sup. Ct. Rep. 240; Belknap v. Schild, 161 US 10, 18, 40 L. Ed. 599, 601, 16 Sup. Ct. Rep. 443; Tindal v. Wesley, 167 US 204, 42 L. Ed. 137, 17 Sup. Ct. Rep. 770; Scranton v. Wheeler, 179 US 141, 152, 45 L. Ed. 126, 133, 21 Sup. Ct. Rep. 48. And in case of an injury threatened by his illegal action, the officer cannot claim immunity from injunction process. The principle has frequently been applied with respect to state officers seeking to enforce unconstitutional enactments. Osborn v. Bank of United States, 9 Wheat. 738, 843, 868, 6 L. Ed. 204, 229, 235; Davis v. Gray, 16 Wall. 203, 21 L. Ed. 447; Pennoyer v. McConnaughy, 140 US 1, 10, 35 L. Ed. 363, 365, 11 Sup. Ct. Rep. 699; Scott v. Donald, 165 US 107, 112, 41 L. Ed. 648,

653, 17 Sup. Ct. Rep. 262; Smyth v. Ames, 169 US 466, 42 L. Ed. 819, 18 Sup. Ct. Rep. 418; Ex parte Young, 209 US 123, 159, 160, 52 L. Ed. 714, 728, 729, 13 L.R.A. (N.S.) 932, 28 Sup. Ct. Rep. 441, 14 A. & E. Ann. Cas. 764; Ludwig v. Western U. Teleg. Co., 216 US 146, 54 L. Ed. 423, 30 Sup. Ct. Rep. 280; Herndon v. Chicago, R.I. & P.R. Co., 218 US 135, 155, 54 L. Ed. 970, 976, 30 Sup. Ct. Rep. 633; Hopkins v. Clemson Agri. College, 221, US 636, 643-645, 55 L. Ed. 890, 894, 895, 35 L.R.A. (N.S.) 243, 31 Sup. Ct. Rep. 654. And it is equally applicable to a Federal officer acting in excess of his authority or under an authority not validly conferred. Noble v. Union River Logging R. Co., 147 US 165, 171, 172, 37 L. Ed. 123, 125, 126, 13 Sup. Ct. Rep. 271; American School v. McAnnulty, 187 US 94, 47 L. Ed. 90, 23 Sup. Ct. Rep. 33."

The case of *Ickes* v. *Fox*, 57 S. Ct. 412, 300 US 82, 81 L. Ed. 525 is conclusive of the questions which might be raised in the present proceeding regarding the jurisdiction of the Courts of Louisiana and is determinative of a case of this kind. The Supreme Court there said:

* * * "Petitioner's contention that the United States is an indispensable party defendant and, as it cannot be sued, the suits should have been dismissed, is based upon the propositions, as we understand them, that the United States is the owner of the water-rights; that respondent's claims rest entirely upon executory contracts; and that the relief sought is the substantial equivalent of specific performance of these contracts.

The fallacy of the contention is apparent, because, the thus-far undenied allegations of the bill, as already appears, demonstrates that respondents have fully discharged all their con-

tractual obligations; that their water-rights have become vested; and that ownership is in them and not in the United States. The motion to dismiss concedes the truth of these allegations; but even if they were denied, we should still be obliged to indulge the presumption, in favor of the jurisdiction of the trial court, that respondents might be able to prove them. United States v. Lee, 106 US 196, 218, 219, 27 L. Ed. 171, 181, 1 S. Ct. 240; cf Tindal v. Wesley, 167 US 204, 213, et seq., 42 L. Ed. 137, 142, 17 S. Ct. 770.

The suits do not seek specific performance of any contract. They are brought to enjoin the Secretary of the Interior from enforcing an order, the wrongful effect of which will be to deprive respondents of vested property rights and not only acquired under Congressional acts, state laws and government contracts, but settled and determined by his predecessors in office. That such suits may be maintained without the presence of the United States has been established by many decisions of this court, of which the following are examples: Noble v. Union River Logging R. Co., 147 US 165, 171, 172, 176, 37 L. Ed. 123, 125-127, 13 S. Ct. 271; Philadelphia Co. v. Stimson, 223 US 605, 619, 56 L. Ed. 570, 576, 32 S. Ct. 340; Goltra v. Weeks, 271 US 536, 544, 70 L. Ed. 1074, 1078, 46 S. Ct. 613; Work v. Louisiana, 269 US 250, 254, 70 L. Ed. 259, 262, 46 S. Ct. 92; Payne v. Central P. R. Co., 255 US 228, 238, 65 L. Ed. 598, 603, 41 S. Ct. 314."

See also:

Blondet v. *Hadley*, 144 F. 2d 370;
Noce v. *Edward E. Morgan Co.*, 106 F. 2d 746;
Berger v. *Ohlson*, 120 F. 2d 56;
Correa v. *Barbour*, 71 F. 2d 9;
Sawyer v. *Dollar*, 190 F. 2d 623, 640.

The case of *Blondet* v. *Hadley*, 144 F. 2d 370, was one where plaintiff sought to enjoin the defendant from trespassing upon property of which plaintiff was in possession under a claim of ownership. Although the defendant claimed that the property belonged to the United States, the Court nevertheless sustained jurisdiction on the ground that the defendant officer was alleged to be exceeding his authority, and the suit was therefore in effect a personal action against him individually.

A case that illustrates the difference between a suit in which the title of the United States is put in issue, and a suit where the sovereign title is incidental or secondary, is that of *Berger* v. *Ohlson*, (9CA) 120 F. 2d 56, where plaintiff sought to enjoin alleged tortious misconduct of government officials, and even though the action involved the question as to whether the United States owned certain property, nevertheless the Court held that the United States would not be bound by the decree and that the suit was not a suit against the Federal Government.

In the case of *Correa* v. *Barbour*, 71 F. 2d 9, plaintiff sought to recover possession of land which was in the possession of the defendant as a forest supervisor for the United States, and the defendant resisted the suit on the grounds that the suit was in effect a suit against the United States because the defendant was exercising dominion and control over it as a government officer, but the Court rejected this defense, saying that the action was not one against the United States and that the United States was not an indispensable party thereto.

The State's suit is in all respects governed by the law of the foregoing decisions. The State suit alleges

that the defendants have tortiously conspired to deprive the plaintiff of its possession and enjoyment of lands and minerals which it possesses as owner, that they threaten to trespass on said lands, and have actually slandered plaintiff's title thereto. Conspiracy, trespass, and slander of title are not privileges or prerogatives conferred on them by the United States. Such tortious conduct is not part or parcel of their official duties, and they are not acting for the government in that respect. As tort-feasors they are in fact exceeding their authority and should be enjoined from doing so.

The petition in the State court sets forth a personal action against the defendants. As for the government agents, they have incurred a personal liability because of their tortious conduct, and cannot claim immunity from suit.

The suit is not one against the United States in any respect.

Injunctive Relief Against Trial in State Court Not Appropriate or Necessary

Plaintiff states on page 11 of its brief that this is not the kind of case which can be carried on in two courts at once, as is possible with actions *in personam*. Counsel then argues that the original proceeding in this Court is an action *in rem* and that the rule that the Court first acquiring jurisdiction shall proceed without interference from another Court applies. If the plaintiff's main premise is true, if the original proceeding in this Court is an action *in rem*, then a conflict in jurisdiction would exist and the State Court should proceed no further. However, the main premise is untrue and this proceeding is not an action

in rem. As pointed out hereinabove plaintiff's original complaint is one for a declaration as to the boundaries between the State and the Federal Government with an incidental demand for an injunction and an accounting based on the Court's decision on the principal demand. The property involved is not in the custody of this Court. There has been no seizure or attachment or other process whereby this Court has seized the res.

This Court has definitely held that an action *in rem* is a proceeding against property alone and that the Court acquires jurisdiction over the property by its seizure, and that an action to determine the title to property where the defendant is brought into Court by ordinary citation is not an action *in rem.* In the case of *Freeman* v. *Alderson,* 119 U.S. 185, 30 L. Ed. 372, this Court said:

> "Actions *in rem,* strictly considered, are proceedings against property alone, treated as responsible for the claims asserted by the libelants or plaintiffs. The property itself is in such actions the defendant * * * The court acquires jurisdiction over the property in such cases by its seizure, and of the subsequent proceedings by public citation to the world, of which the owner is at liberty to avail himself by appearing as a claimant in the case.
>
> There is, however, a large class of cases which are not strictly actions *in rem,* but are frequently spoken of as actions *quasi in rem,* because, though brought against persons, they only seek to subject certain property of those persons to the discharge of the claims asserted. Such are actions in which property of nonresidents is attached and held for the discharge of debts due by them to citizens of the State, and actions for the enforcement of

mortgages and other liens. Indeed, all proceedings having for their sole object the sale or other disposition of the property of the defendant, to satisfy the demands of the plaintiff, are in a general way thus designated. * * *

The action was to recover an undivided interest in the property, and then to obtain a partition of it, and have that interest set apart in severalty to the plaintiffs—a sort of mixed action to try the title of the plaintiffs to the undivided half of the property, and to obtain a partition of that half. Such action, though dealing entirely with the realty, is not an action *in rem* in the strict sense of the term; it is an action against the parties named, and, though the recovery and partition of real estate are sought, that does not change its character as a personal action; the judgment therein binds only the parties in their relation to the property." * * *

In the later case of *Overby* v. *Gordon*, 177 U.S. 214, 44 L. Ed. 741, this Court held:

"Jurisdiction is the right to hear and decide, and it must be exercised, speaking in a broad sense, in one of two modes — either *in rem* or *in personam*.

An essential characteristic, however, of a proceeding *in rem* is that there must be a *res* or subject-matter upon which the court is to exercise its jurisdiction. In cases purely *in rem*, as in admiralty and revenue cases for the condemnation or forfeiture of specific property, a preliminary seizure of the property is necessary to the power of the court to adjudicate at all." * * *

See also:

Cooper v. *Reynolds' Lessee*, 10 Wall. 308 (U.S. 77), 19 L. Ed. 931;

Harnischfeger Sales Corp. v. *National Life Insurance Co.*, 72 Fed. 2d 921;
Beck v. *Otero Irr. Dist.*, 50 F. 2d 951;
Stewart Land Co. v. *Arthur*, 267 F. 184;
Barber Asphalt Paving Co. v. *Morris*, 132 F. 945, 947-8.

In *Hart* v. *Sansom*, 110 U.S. 151, 3 S. Ct. 586, 28 L. Ed. 101, this Court said:

> "Generally, if not universally, equity jurisdiction is exercised in personam, and not in rem, and depends upon the control of the Court over the parties, by reason of their presence or residences, and not upon the place where the land lies in regard to which relief is sought."

The plaintiff's original complaint seeks an injunction and an accounting which are equitable remedies *in personam*. In no sense therefore can this original proceeding be considered as a proceeding *in rem*.

On page 12 of the plaintiff's brief citation is directed to the cases of *Kline* v. *Burke Construction Co.*, 260 U.S. 226, 43 S. Ct. 79, 67 L. Ed. 226, and *Toucey* v. *New York Life Insurance Co.*, 314 U.S. 118, 62 S. Ct. 139, 86 L. Ed. 100. The decisions in these cases definitely support the position of the State of Louisiana here. In those cases the Court held that the rule which would support an injunction against a Court exercising conflicting jurisdiction does not exist in actions *in personam* and applies only to actions *in rem*.

However, as pointed out above, there is no conflict in jurisdiction between this Court and the State Court. The rule which would permit the Court which first takes jurisdiction over a dispute to retain it without interference from another Court is applicable only

where the parties to, the subject matter of, and the relief sought in the two suits are the same, so that if the first suit had already been disposed of, the judgment then should be treated in bar as a former adjudication.

This Court has recognized the proposition that the rule that would permit a Federal Court to enjoin proceedings in a State Court is confined in its operation in instances where both suits are the same, where there is substantial identity of the parties, issues, and the relief sought. In the case of *Pacific Live Stock Co.* v. *Lewis*, 36 Sup. Ct. 637, 241 U.S. 440, 447, 60 L. Ed. 1084, 1096, your Honors held:

> "The rule that where the same matter is brought before courts of concurrent jurisdiction, the one first obtaining jurisdiction will retain it until the controversy is determined, to the entire exclusion of the other, and will maintain and protect its jurisdiction by an appropriate injunction, is confined in its operation to instances where both suits are substantially the same; that is to say, where there is substantial identity in the interests represented, in the rights asserted, and in the purposes sought. Buck v. Colbath, 3 Wall. 334, 345, 18 L. Ed. 257, 261; Watson v. Jones, 13 Wall. 679, 715, 20 L. Ed. 666, 671; Rickey Land & Cattle Co. v. Miller & Lux, 218 US 258, 262, 54 L. Ed. 1032, 1038, 31 S. Ct. Rep. 11. This is not such an instance. The proceeding sought to be enjoined, although in some respects resembling the prior suits, is essentially different from them. They are merely private suits brought to restrain alleged encroachments upon the plaintiff's water right, and, while requiring an ascertainment of the rights of the parties in the waters of the river, as between themselves, it is certain that they do not require any other or further determination respecting those waters."

The facts and the law recited in the foregoing decision of the Supreme Court are surely applicable to the issue raised in the case at bar.

See also:

Boynton v. *Moffat Tunnel Improvement Dist.*, 57 F. 2d 772, 778, 779, 780;
Newberry v. *Davison Chem. Co.*, 65 F. 2d 724-728.

On page 13 of its brief plaintiff argues that the dispute between the United States and Louisiana should not be tried in a State Court because "this case involves very delicate problems of international law and foreign relations, since it turns mainly on a determination of the external boundary of the United States." This is an inaccurate statement of the case because the question presented to this Court in the original complaint is one to determine the *internal* boundary of the United States on the Continental Shelf. Such a question is not raised in the State Court. The only question raised in the State Court is a question of possession and the right of the State to maintain that possession until the questions of boundary or title have been determined. This right to possession and to enjoin trespass involves no question of international law or foreign relations. It is based entirely on State statutes and State jurisprudence, and it in no way infringes upon the jurisdiction of this Court.

As we pointed out in the State's brief in opposition to the motion for leave to file the original complaint, pages 31-34, the dispute pending in this Court does not involve any delicate problems of international law and foreign relations. If it did involve the foreign policy of the United States it would not be a matter

for judicial action since such questions are political questions which belong to the executive department of the Government. In any event, the United States has never pointed out any problem or any question that has arisen in our foreign policy regarding Louisiana's claim to submerged lands. No protest has ever been made by any foreign Government, although Louisiana has exercised dominion, possession and jurisdiction over these lands from time immemorial. No protest was made in 1870 when the Legislature of Louisiana enacted Act No. 18 of 1870 which forbade aliens to fish or to remove oysters and shells from the waters of the Gulf of Mexico adjacent to the shores of Louisiana. No protest was made in 1915 when the Legislature of Louisiana authorized the leasing of these lands for mineral development and production. No protest was voiced in 1938 when the Legislature of Louisiana enacted Act No. 55 to extend the boundaries of the State to 27 miles from the coast. No question was raised by any foreign power when the President of the United States on September 28, 1945, issued a proclamation whereby the United States asserted the right to explore and develop the entire Continental Shelf in the Gulf of Mexico for the production of minerals. No delicate question or problem of international law and foreign relations had ever been raised until counsel for plaintiff suggested these problems and questions in his brief.

Plaintiff's suggestion that the injunction against the State issued by this Court in the original case of *United States* v. *Louisiana*, 340 U.S. 899, is outstanding and that further proceedings by the State Court would conflict with this injunction is also without merit. Injunction issued by this Court in the original

Louisiana case was based on the finding of this Court that the State of Louisiana had no title or property interest in lands lying seaward of the ordinary low water mark. See decree *United States* v. *State of Louisiana*, 340 U.S. 899, 71 S. Ct. 275, 95 L. Ed. 651. The United States Congress found otherwise in the Submerged Lands Act wherein it disclaimed any interest whatever in lands lying seaward of the coast of Louisiana within three leagues therefrom. These are the lands involved in the State Court suit.

Injunction Against Proceeding in the State Court Forbidden By 28 USC 2283

Counsel for plaintiff realizes that provisions made by 28 U.S.C. 2283 forbidding a Court of the United States to enjoin or stay proceedings in the State Court except as authorized by Act of Congress or where necessary in aid of its jurisdiction, would by its terms forbid the injunction sought here unless this case is an exception to the rule. Plaintiff offers two reasons why this case should be excepted from the rule: First, that an injunction is necessary in aid of this Court's jurisdiction and second, this rule of law is inapplicable to the United States.

The first proposition has already been discussed and will only be discussed further in the light of the decisions cited on pages 14 and 15 of the plaintiff's brief. Plaintiff's argument here is based upon the assertion that this is a proceeding *in rem*. That argument has already been disposed of in the foregoing section of this brief.

In the case of *Covell* v. *Heyman*, 111 U.S. 176, 28 L. Ed. 390, cited by plaintiff, the property involved was in the custody of the Court having been seized

under an execution issued upon a Judgment of a Circuit Court of the United States. The proceeding was *in rem* and the Court very properly enjoined proceedings in a State Court to recover possession of the property.

The *Kline* and *Toucey* cases have already been discussed above. They are inapplicable here because this Court sustained the proposition that an injunction would not be issued against the State Court proceedings in the absence of custody of the property involved by the Federal Court. As shown hereinabove, these decisions support the defendant's position here. Similarly, the case of *B. & O. Railroad Co.* v. *Wabash Railroad Co.*, 119 F. 678, sustains the defendant's contention that an injunction to stay State Court proceedings will not be issued by a Federal Court where the property involved is not in actual possession of the Court.

Counsel for plaintiff also refers to the case of *Amalgamated Clothing W. of A.* v. *Richman Bros. Co.*, 348 U.S. 511, 75 S. Ct. 452, 99 L. Ed. 600. That case is so much in line with the defendant's position that we will quote appropriate paragraphs of the Court's opinion, as follows:

> "We need not re-examine the series of decisions prior to the enactment of Title 28 of the United States Code in 1948, which appeared to recognize implied exceptions to the historic prohibition against federal interference with state judicial proceedings. See Toucey v. New York Life Ins. Co., 314 US 118, 86 L. Ed. 100, 62 S. Ct. 139, 137 ALR 967. By that enactment, Congress made clear beyond cavil that the prohibition is not to be whittled away by judicial improvisation.

> In the face of this carefully considered enactment, we cannot accept the argument of petitioner and the Board, as amicus curiae, that § 2283 does not apply whenever the moving party in the District Court alleges that the state court is 'wholly without jurisdiction over the subject matter, having invaded a field preempted by Congress.' No such exception had been established by judicial decision under former § 265. In any event, Congress has left no justification for its recognition now. This is not a statute conveying a broad general policy for appropriate ad hoc application. Legislative policy is here expressed in a clear-cut prohibition qualified only by specifically defined exceptions."

The foregoing decision is an answer to the argument by plaintiff beginning at the bottom of page 14 and continuing through page 15. In any event, the authorities cited by plaintiff in this portion of its brief are inapplicable. In the cases there listed the property was in the possession of the Federal Government, its officers and agents and the purposes of the suits in the State Courts were to dispossess the United States. Such is not the situation here. The State of Louisiana is in the possession of the properties involved and is seeking to protect that possession against trespass until the boundary and title questions are decided by this Court.

The second proposition urged by plaintiff under this heading is that provisions of 28 U.S.C. 2283 are inapplicable where the United States is a party to the suit. The decisions of this Court cited on page 16 of the brief in support of this theory are inapplicable because these cases only involve the question as to the right to sue the United States without its consent. No attempt has been made by the State of Louisiana to

sue the United States and no question of consent of the sovereign to be sued is involved here.

The decision in *United States* v. *Taylor's Oak Ridge Corp.*, 89 F. Supp. 28, decided by District Court for the Eastern District of Tennessee does state that the rule of comity stated in 28 U.S.C. 2283 is not applicable to the United States because the sovereign is not included within its terms. That statement by the District Judge is pure obiter dicta, and is not supported by the authorities cited. In any event, it conflicts with the rule stated by the Court in the *Amalgamated Clothing Workers* case quoted above wherein your Honors stated that Congress made clear beyond cavil that the prohibition is not to be whittled away by judicial improvisation. It also conflicts with many prior rulings of this Court to the effect that the rule against interference with the proceedings of State Courts "is not only one of comity, to prevent unseemly conflicts between Courts whose jurisdiction embraces the same subject and persons, but between State Courts and those of the United States it is something more. 'It is a principle of right and law and therefore of necessity.' It leaves nothing to discretion or mere convenience."

Kline v. *Burke Construction Co.*, 260 U.S. 226, 231, 67 L. Ed. 226, 231;
Toucey v. *New York Life Ins. Co.*, 314 U.S. 113, 135, 86 L. Ed. 100, 106;
Covell v. *Heyman*, 111 U.S. 176, 4 S. Ct. 355, 28 L. Ed. 390.

28 U.S.C. does not "divest pre-existing rights or privileges" of the United States. It simply gives statutory recognition to a rule of comity that has always existed, and should always exist between

Federal and State courts under a republican form of government.

In *United States* v. *United Mine Workers,* 330 U.S. 258, 67 S. Ct. 677, 91 L. Ed. 884, this Court held that the provisions divesting the Federal Courts of jurisdiction to issue injunctions in labor disputes did not apply to the United States because the definition of "employer" contained in the Act specifically negatived the idea that this Act applied to the government. The Court did refer to the "old and well known rule that statutes which in general terms divest pre-existing rights and privileges will not be applied to the Sovereign without express words to that effect", but this was not the basis for the Court's decision. This clearly appears from the statement, "But we need not place entire reliance in this exclusionary rule", 330 U.S. 273, 91 L. Ed. 902.

It is therefore respectfully submitted that plaintiff's motion for injunction should be denied.

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APPENDIX

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

Civil Action No. 5489

SUIT NO. 38,780 IN THE
FOURTEENTH JUDICIAL DISTRICT COURT

PARISH OF CALCASIEU, STATE OF LOUISIANA

STATE OF LOUISIANA

v.

ANDERSON-PRICHARD OIL CORPORATION, et al.

Amended Petition

Now comes the State of Louisiana, plaintiff in the above numbered and entitled cause, and shows unto the Court that no answer or other pleading has been filed herein, and that the plaintiff desires to amend its petition in the following respects:

1.

Plaintiff adopts and reiterates all of the allegations of fact contained in its original petition herein filed.

2.

The Prayer of the petition is amended to read as follows:

"Wherefore, plaintiff prays that a temporary restraining order issue herein immediately, and before a hearing, enjoining, restraining and prohibiting the defendants named in the foregoing

petition, and any and all persons acting by, through or under them, or any of them from disturbing plaintiff's possession, enjoyment and administration of the submerged lands and natural resources and property rights described in this petition, or slandering plaintiff's title thereto, and conspiring with one another for such purposes and restraining and prohibiting the individual defendants from offering for lease said submerged lands and natural resources within Louisiana's historic boundary three leagues from coast in the Gulf of Mexico or from receiving, accepting, opening, or awarding bids for leasing same for the development and production of minerals, and from further threatening plaintiff's lessees from going upon said submerged lands and operating to develop the same, and from conspiring with one another and with the corporate defendants or any other parties for such purposes, and enjoining and prohibiting the said corporate defendants from bidding or offering bids for, and from entering into any purported mineral leasing contracts with said personal defendants as purported agents acting in violation of law, and also from entering upon the said lands within the boundary of the State of Louisiana for purported mineral leasing or for the purposes therein contemplated, or for any other related and unauthorized purposes, except with the permission and agreement of plaintiff, the State of Louisiana, as owner of said submerged lands and mineral resources.

Plaintiff further prays that the said defendants be ordered to show cause on a day to be fixed by this Honorable Court why a preliminary injunction should not issue herein, enjoining, restraining and prohibiting them and any and all persons acting by, through or under them from doing any of the acts and things described and set forth in the preceding paragraph.

Plaintiff further prays that after due proceedings had a permanent injunction be issued herein restraining and enjoining the said defendants, their officers, agents, servants and employees from trespassing on, or slandering the title to, or interfering in any manner with the plaintiff's right of ownership, possession, administration and jurisdiction of the submerged lands and natural resources and property rights described herein, and from leasing or offering to lease the same for development and production of minerals, and from conspiring with one another or with any other persons or corporations for such purposes.

Plaintiff further prays for all orders and decrees necessary and for full, general and equitable relief."

WHEREFORE, plaintiff prays that in due course Judgment be rendered in favor of the plaintiff and against the defendants as prayed for in the original petition as amended herein; for all orders and decrees necessary, for costs and for full and general and equitable relief.

/s/ JACK P. F. GREMILLION
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Attorney General
State of Louisiana

EDWARD M. CARMOUCHE
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Proof of Service

I, ..., one of the attorneys for the State of Louisiana, defendant herein, and a member of the Bar of the Supreme Court of the United States, certify that on the ... day of ....., 1956, I served copies of the foregoing Motion to Dismiss and Defendant's Opposition to Plaintiff's Motion For Injunction, With Supporting Brief, by leaving copies thereof at the offices of the Attorney General and of the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D. C.

.....

Office - Supreme Court, U. S.
FILED
JUN 22 1956
HAROLD B. WILLEY, Clerk

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No. [redacted] ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1955

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

MOTION TO DISMISS ON JURISDICTIONAL GROUNDS

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No. 15 ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1955

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

MOTION TO DISMISS ON JURISDICTIONAL GROUNDS

Now comes the State of Louisiana, through its Attorney General, and with full reservation of all rights under the objections heretofore filed to the granting of leave for the filing of the bill of complaint herein, and reserving all rights to answer further to the said bill of complaint herein, now moves to dismiss the bill of complaint herein filed by the United States of America against the State of Louisiana for the following reasons and causes:

I.

This Court is without jurisdiction of the subject matter of the complaint in view of the allegation in paragraph IX therof that "the fundamental question in issue is the width of the marginal sea within the jurisdiction of the United States, which involves inquiry into and application of the foreign policy of the United States in a matter of peculiar importance and delicacy". In this connection plaintiff states on page

16 of its brief in support of its motion for leave to file the complaint: "Thus the case requires inquiry into and application of the foreign policy of the United States, on the one hand with respect to its territorial claims against other nations, and on the other hand with respect to its assertion and recognition of freedom of the seas." The conduct of the foreign relations of the United States is committed by the Constitution to the Executive and Legislative—"the political"—Departments of the Government and is not subject to judicial inquiry or decision.

II.

The Supreme Court of the United States does not have original jurisdiction over any controversy between the United States of America and the State of Louisiana, under Article III, Section 2, of the Constitution of the United States, or under any other provision of the Constitution of the United States, because this Court is not empowered by the Constitution to entertain an original suit between the United States and a State.

III.

That the United States Constitution does not authorize or empower the United States to institute a suit against the State of Louisiana, or any State, in this Court, and, therefore, this Court cannot entertain jurisdiction of the within suit of the United States against the State of Louisiana.

IV.

That the original jurisdiction of this Court is confined to cases specified in the United States Constitution, and Congress cannot enlarge upon such jurisdiction, and, therefore, Title 28, United States Code, Section 1251(b)(2), which purports to grant to this Court original jurisdiction in controversies between the United States and a State contravenes the provisions of Article III, Section 2, of the Constitution of the United States, and the same, therefore, is unconstitutional, null and void.

V.

In the alternative, defendant, State of Louisiana, shows that in the event the said Title 28, United States Code, Section 1251 (b) (2), should be held to be constitutional against which defendant, State of Louisiana, protests, then defendant, State of Louisiana, shows that the above provision of the United States Code, which purports to grant to this Court original jurisdiction of "all controversies between the United States and a State;", does not grant to this Court jurisdiction to entertain a suit of any State against the United State, because of its sovereign immunity from suit, nor does said provision grant to this Court original jurisdiction to entertain a suit filed by the United States against the State of Louisiana, because of the State's sovereign immunity from suit, without its consent, and that the State of Louisiana, defendant, has not

consented to be sued by the United States herein. Therefore, this Court does not have jurisdiction ratione personae.

WHEREFORE, the premises considered, the State of Louisiana prays that the first ground of its motion to dismiss, contained in paragraphs I, II and III above, be sustained; that in the event the Court should overrule the grounds of defendant's motion set out in paragraphs I, II and III above, then, in the alternative, defendant prays that the alternative ground of its motion to dismiss set out in paragraphs IV and V above, be sustained, and that the complaint of the United States of America against the State of Louisiana herein be dismissed.

Oral argument is requested.

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BRIEF IN SUPPORT OF MOTION TO DISMISS ON JURISDICTIONAL GROUNDS.

I.

THIS COURT HAS NO JURISDICTION OVER THE ISSUES PRESENTED BY THE COMPLAINT.

Plaintiff avers both in the complaint and in its supporting brief that the fundamental issues presented here involve questions concerning the foreign policy of the United States and that the case requires inquiry into the nation's foreign policy with respect to its territorial claims against nations and with respect to its assertion and recognition of freedom of the seas. The complaint in paragraph IX states that this inquiry into and application of the foreign policy of the United States is the *fundamental question in issue.*

Article I Section 8 of the Constitution gives broad powers to the Congress of the United States in the matter of this nation's conduct of its foreign affairs. Thus Congress is given the authority to provide for the common defense, to regulate commerce with foreign nations, to define and punish offenses against the law of nations, to declare war and make rules concerning captures on land and water, to raise and support Armies, to provide and maintain a Navy, to exercise exclusive legislation over public properties, and to make all laws necessary and proper for carrying out these powers.

Article II, Section 2 confers upon the Executive the power to make treaties with the concurrence of two-thirds of the Senate, to appoint ambassadors and in general to direct the foreign policy of the nation.

No power is granted by the Constitution to the judiciary to inquire into these matters, and certainly there is no authority in the judiciary to determine the external boundaries of the United States. The purpose of the complaint in this case is to secure from the judiciary a determination of the external boundaries of the nation. On page 13 of plaintiff's motion for an injunction and brief in support thereof recently filed the statement is made that this case "turns mainly on a determination of the external boundary of the United States."

These are political questions and this Court has no jurisdiction to pass upon questions of a political nature. Questions relating to the foreign policy of the United States are for the Executive and the Legislative Departments, and the establishment of the nation's boundaries is a matter for the Congress to determine. This Court made the following statement in *Oetjen v Central Leather Co., 246 US 297, 302, 62 L.Ed. 726, 732,* which is applicable to these issues:

> "The conduct of the foreign relations of our government is committed by the Constitution to the executive and legislative—"the political"—department of the government, and the propriety of what may be done in the exercise of this politi-

cal power is not subject to judicial inquiry or decision. *United States v. Palmer, 3 Wheat. 610, 4 L.Ed. 471; Foster v. Neilson, 2 Pet. 253, 307, 309, 7 L.Ed. 415, 433, 434; Garcia v. Lee, 12 Pet. 511, 517, 520, 9 L.Ed. 1176, 1178, 1179; Williams v. Suffolk Ins. Co., 13 Pet. 415, 420, 10 L.Ed. 226, 228; Re Cooper, 143 US 472, 499, 36 L.Ed. 232, 240, 12 Sup. Ct. Rep. 453.*"

In the case of *Foster & Elam v. Neilson, 2 Pet. 253, 307, 309, 7 L.Ed. 415, 433, 434,* this Court held that the determination of the nation's boundaries is a political rather than a legal question. In that case Chief Justice Marshall said *(2 Pet. 307, 309, 7 L.Ed. 433, 434):*

> "The judiciary is not that department of the government to which the assertion of its interests against foreign powers is confided; and its duty commonly is to decide upon individual rights, according to those principles which the political departments of the nation have established. * *
>
> A question like this respecting the boundaries of nations, is, as has been truly said, more a political than a legal question; and in its discussion, the courts of every county must respect the pronounced will of the Legislature."

This Court has on numerous occasions determined the boundaries between the States, and between states and territories, and in such cases has distinguished the issues there, from those involved in the *Foster* and *Elam* case, but where the inquiry involved a deter-

mination of foreign policy, the right to appropriate the open seas, and the extension or the determination of the external boundaries of the nation, the Courts have no jurisdiction.

Mr. Chief Justice Taney in *Garcia v. Lee, 12 Pet. 517, 9 L.Ed. 1179, stated:*

> "A question like this, respecting boundaries of nations, is, as has been truly said, more a political than a legal question; and in its discussion the courts of every country must respect the pronounced will of the Legislature."

Further evidence that plaintiff is seeking relief beyond the jurisdiction of this Court is found on Page 11 of its original brief in support of its motion for leave to file a complaint against Louisiana. There the plaintiff states:

> "Congress expressed no view as to the location of the boundary, intending and expecting any dispute regarding its location to be determined by this Court."

If we assume that this is true we are met with the proposition that Congress cannot delegate its legislative powers to the Court. Congress, not the Court, must fix the boundaries of the United States. There is nothing in the complaint to show that any dispute exists which is a proper subject for judicial determination.

It is therefore respectfully submitted that issues presented by the complaint in this case are issues for

the determination of Congress and not for adjudication by the Court.

II.

THIS COURT HAS NO JURISDICTION OVER A CONTROVERSY BETWEEN THE FEDERAL GOVERNMENT AND A STATE.

It is fundamental that the United States Constitution created the Supreme Court of the United States and granted to it original jurisdiction affecting only the parties specified,—i.e., ambassadors, other public ministers and consuls and those in which a State shall be a party.

In all the other cases mentioned in Section 2 of Article III pertaining to the judicial power, including controversies to which the United States shall be a party, the Constitution provided that the Supreme Court shall have appellate jurisdiction, under such regulations as the Congress shall make.

> "The original jurisdiction of the Supreme Court is confined to cases specified in the Constitution, and Congress cannot enlarge or restrict it."[1]

Constitutional Convention Record

The record of the Constitutional Convention, which wrote the Constitution of the United States is sufficiently extant for authoritative reference as to what judicial power was granted to the United States

[1] Marbury v. Madison, D.C. 1803, 1 Cranch 137, 2 L.Ed. 60.

and what original jurisdiction was conferred upon the Supreme Court of the United States, as well as to what judicial power and jurisdiction were denied to the United States and to this Court.

First: On June 17, 1787, the Convention had before it the Paterson Plan.[2]

Included in the plan was a recommendation which read as follows:

> "Provision ought to be made for hearing and deciding upon all disputes arising between the United States and an individual state, respecting territory."

On June 19, 1787, *the Convention adopted a motion* by a vote of 7 to 3, 1 state divided, *to reject the Paterson Plan.* This rejection included the above proposition.[3]

Second: Mr. Pinckney submitted several propositions to the Convention on August 20, 1787, and they were referred to the Committee of Detail. One of the propositions read as follows:

> "The jurisdiction of the Supreme Court shall be extended to all controversies between the United States and an individual state; or the United States and the citizens of an individual state."[4]

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[2] H. Doc. 398, 69th Cong.; 1st Sess. pp. 769 & 973; 1 Eliott's Debates, p. 177.

[3] 1 Elliott's Debates 180.

[4] The Madison Papers, Vol. III, p. 1366; H. Doc. 398, 69th Cong.; 1st Sess.; p. 572.

No action was taken on the above proposition.

Third: On August 22, 1787, Mr. Rutledge for the Committee of Detail, submitted a report to the Convention, suggesting the following amendment to the Randolph or Virginia Plan, then before the Convention:

> "Between the fourth and fifth lines of the third section of the eleventh article, after the word 'controversies', insert 'between the United States and an individual state, or the United States and an individual person' "[5]

The record shows that *no action was taken on this proposition.*

Fourth: Mr. Carroll made the following motion to the Convention on August 30, 1787:

> "Nothing in this Constitution shall be construed to alter the claims of the United States, or of the individual states, to the western territory; but all such claims shall be examined into, and decided upon, by the Supreme Court of the United States."[6]

While the proposed extension of jurisdiction would have only applied to the United States and individual states regarding western territory, it involved the same basic proposition of granting to the United States

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[5] The Madison Papers, Vol. III, p. 1399; H. Doc. 398, 69th Cong.; 1st Sess.; p. 595-6.

[6] The Madison Papers, Vol. III, p. 1465; H. Doc. 398, 69th Cong.; 1st Sess.; p. 644.

Supreme Court original jurisdiction of controversies between the United States and States of the Union.

The Carroll motion was postponed, and the record shows that *the Convention never took action on it.*

Turning from definitive rejection by inaction to peremptory rejection by action, we come to the proceedings of the Convention on August 30, 1787.

Fifth: On August 30, 1787, the Convention was considering Article XVII of the Randolph Plan,[7] regarding the admission of new states, and a discussion arose in regard to claims of the United States and individual states to territory.[8]

The following proposition was submitted as an addition to the draft of the Constitution:

> "The Legislature shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States; and nothing in this Constitution shall be construed as to prejudice any claims, either of the United States or of any particular state."

Thereupon, a motion was made to amend said proposal so as to add the following sentence:

> "But all such claims may be examined into, and decided upon, by the Supreme Court of the United States."

---

[7] H. Doc. 480.

[8] The Madison Papers; Vol. III, pp. 1465-1466; H. Doc. 398, 69th Cong.; 1st Sess.; pp. 644-645.

This motion to amend was peremptorily rejected by a vote of 8 states against and only 2 states for the motion.*

Thus, there were before the Federal Constitutional Convention propositions to grant Original jurisdiction to the United States to controversies between the United States and an individual state and to examine into and decide upon the claims of the United States and an individual state to territory or property, none of which was incorporated into the Constitution and *the last of which was peremptorily rejected.*

Nowhere in the action of the Constitutional Convention, nor in any provision adopted as a part of the United States Constitution can it be shown that the original jurisdiction of this Court was made to extend either to controversies between the United States and any particular state or to the claim of any territory or property between the United States and any particular state.

By the action of the Constitutional Convention on August 30, 1787 in peremptorily rejecting the proposition that the Supreme Court of the United States should be given original jurisdiction to examine into and decide territorial claims of the United States and individual states, this Court was denied the very jurisdiction which the bill of complaint here seeks to have it exercise, because this Court does not have jurisdiction over the subject matter of this suit.

---

* H. Doc. 398, p. 645, 1 Elliott's Debates 275, 276.

In view of the incontrovertible fact that the original jurisdiction of this Court stems from the Constitution of the United States, and from no other source or authority, it cannot be successfully argued or urged upon this Court, that the original jurisdiction of this Court extends to the present case which involves a controversy between the United States and the State of Louisiana, over a claim to territory or other property.

The early decisions of this Court, when the proceedings and history of the Constitutional Convention were fresh in the mind of the jurists, some of whom had either served as delegates or advocated ratification, bear out the fact that the Constitution does not give this Court original jurisdiction of a suit by the United States against a state, and, further, that the original jurisdiction conferred upon this Court by the Constitution cannot be extended.

Marbury v. Madison[10] held an Act of Congress unconstitutional, for the first time, because it sought to extend the original jurisdiction of this Court to suits against officials (Secretary of State) of the United States.

In *Cohens v. Virginia*[11] it was held that the original jurisdiction of this Court depended on the character of parties designated in the Constitution—and that

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[10] See footnote 1, supra.

[11] (1821) 6 Wheat. (19 US) 262, 5 L.Ed. 264.

after passage of the 11th Amendment, the original jurisdiction of this Court still extended to cases between two or more states, or between a State and a foreign state. (Not the United States).

In *Cherokee Nation v. Georgia*,[12] this Court held that the original jurisdiction of this Court extends only to cases in which both the plaintiff and the defendant are designated in the class of parties specified in the Constitution.

In this case, this Court held (p. 15):

> "Before we can look into the merits of the case, a preliminary inquiry presents itself. *Has this Court jurisdiction of the cause?*"

The Court referred to the third Article of the Constitution which describes the extent of the judicial power, Section 2 of which reads:

> "2. The judicial Power shall extend to all cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of Admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a party;—to Controversies between two or more States;—between a State and citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a

[12] (1831) 5 Pet. (30 US) 1, 8 L.Ed. 1.

> State, or the Citizens thereof, and foreign States, Citizens or Subjects."

and said (p. 15):

> "A subsequent clause of the same section gives the Supreme Court original jurisdiction in all cases in which a State shall be a party. The party defendant may then unquestionably be sued in this Court. *May the plaintiff sue in it?* Is the Cherokee Nation a foreign State in the sense in which the term is used in the Constitution?"

There it was held by the Court that the Cherokee Indian tribe within the United States is not a foreign State in the sense of the Constitution, and cannot maintain an action in the Courts of the United States.

By the same reasoning and authority, therefore, the United States is not a state, or a foreign State which may sue in the Supreme Court, in the sense in which the terms are used in the Constitution.

In *Rhode Island v. Massachusetts*,[13] this Court held that the sovereign States in Convention assembled made a grant to the United States of *judicial power* over controversies between two or more States, and it was ordained that the Supreme Court should have original jurisdiction in cases where a State was party "*in the cases specified*".

In *Florida v. Georgia*,[14] the Court held that while the United States could not intervene as party plaintiff

[13] (1838) 12 Pet. (37 US) 657, p. 720, 9 L.Ed. 1233.
[14] (1854) 17 Howard (58 US) 478, 15 L.Ed. 181.

or defendant in a suit between two States, its Attorney General would be permitted to file evidence for the information of the Court (as a sort of amicus curiae), and the Attorney General for the United States formally, in his brief, admitted that this Court is not empowered by the Constitution to entertain an original suit between the United States and a State, and that it is a settled rule of law that where the jurisdiction depends on the character of the parties, each party must be competent to sue or be sued in this Court.

In this case the United States of America, through its Attorney General, formally admitted that this Court did not have original jurisdiction of a suit in which the United States was plaintiff against a State of the Union, as follows:[15]

> "The United States cannot be made a party in any form to an original suit in this Court between two states."
> (Citing Clause 2 of Section 2 of Article III of the Constitution).
>
> "The court has jurisdiction in this case only in virtue of the clause of the Constitution which authorizes it to adjudicate on 'controversies between two or more states".
>
> To be sure, afterward, it is said, that 'in all cases . . in which a state shall be party the Supreme Court shall have original jurisdiction.' But this is not the delegation of a new class of jurisdiction as to subject matter. The clauses are to

[15] 15 L.Ed. p. 184.

be taken together so as to signify that the original jurisdiction shall embrace either of the foregoing enumerated cases in which the jurisdiction attaches to a state.

The court is not empowered by the Constitution to entertain an original suit between the United States and a state, or the United States and two states.

It is the settled rule of law that where the jurisdiction of the Courts of the United States depends on the character of the parties, and each party, either plaintiff or defendant, consists of a number of individuals *each one must be competent to sue or be sued in those courts; and otherwise jurisdiction cannot be entertained."* (Emphasis added)

The Supreme Court of the United States is not empowered by any theory of inherent power to delegate to itself jurisdiction which the Constitution does not grant to it, and which the Convention that wrote the United States Constitution specifically refused to grant.

The constitutional question submitted to this Court by special appearance presents a barrier to further proceedings in this case because of the lack of constitutional authority or jurisdiction in this Court.

Regardless of the fact that this Court may have rendered judgments in other cases of the United States against particular states, such does not constitute *stare*

decisis or precedent prejudicial to the State of Louisiana herein.

We are not unmindful in making this argument of the case of *United States v. West Virginia*,[16] and the other cases therein cited; however, it has been the declared policy of this Court to interpret the language of the constitution *itself* free from the gloss that may have been placed upon it by earlier decisions, particularly where the precise issue was never raised by the defendants in the other cases.

In such cases the fact that other states, either by design or oversight consented to be sued, or failed to raise the constitutional objection to lack of jurisdiction in this Court to entertain such action by the United States against a particular state, cannot be considered as authority over-riding the action of the Constitutional Convention in refusing to grant this Court original jurisdiction in such controversies.

The Constitution as originally written and the action of the Constitutional Convention in refusing to give this Court jurisdiction in such cases, has not been changed or over-ridden by any amendment to the United States Constitution adopted in any manner prescribed for amendment to the Constitution.

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[16] 295 US 463, 55 S.Ct. 789, 79 L.Ed. 1546.

III

CONGRESS CANNOT ENLARGE COURT'S ORIGINAL JURISDICTION

As held by this court frequently, the original jurisdiction of the Supreme Court is confined to cases specified in the Constitution, and Congress cannot enlarge or restrict it.

If the original jurisdiction of this Court is to be measured by the express and exclusive grant in the United States Constitution, Article III, Section 2, and if the rule of interpretation that an Act of Congress cannot supersede the relevant provisions of the Constitution, then it must follow that the provisions in Title 28, United States Code, Section 1251 (b)(2), purporting to grant to this Court original jurisdiction of controversies between the United States and a State is unconstitutional as contravening the positive provision of Article III, Section 2, of the Constitution of the United States, as above.

The Court's attention is particularly directed to the history of the adoption of Article III, Section 2, of the Constitution, as shown by the record of the Convention above referred to, when original jurisdiction in controversies between the United States and any particular State was denied by action of the Constitutional Convention.

While this Court has entertained jurisdiction and rendered judgments in several suits of the United

States against individual states, a close study of such cases will disclose that little or no consideration was given to the fundamental principal involved, as held in *Marbury v. Madison*[17] and later cases, and also as admitted by the United States through its Attorney General in *Florida v. Georgia*, (1854)[18] that this Court was not empowered by the Constitution to entertain an original suit between the United States and a State; that the original jurisdiction of this Court depended upon the character of the parties, and each party, plaintiff and defendant, must be competent to sue or be sued in the original jurisdiction of this Court,—otherwise jurisdiction cannot be entertained.

Furthermore, the position taken by this Court in exercising original jurisdiction in suits by the United States against individual States since 1890[19] was virtually with the acquiescence of the States sued, without issue being made of the lack of jurisdiction on the part of this Court.

As stated by the Court in the North Carolina case, the first in which this Court assumed such original jurisdiction, "It is true that no question was made as to the jurisdiction of this Court, and nothing was, therefore, said in the opinion upon that subject."

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[17] 1 Cranch 137, 2 L.Ed. 60.

[18] 12 Pet. (37 US) 657, 9 L.Ed. 1233.

[19] US v. North Carolina, 136 US 211, 10 S.Ct. 920, 34 L.Ed. 336; US v. Texas, 143 US 621, 12 S.Ct. 488, 492, 36 L.Ed. 285.

From then on this Court exercised jurisdiction of several other suits of the United States against individual States, because it had exercised jurisdiction in the suit of the *United States v. North Carolina*,[20] when no question was made as to the jurisdiction of this Court.

It can be said, however, that this Court has never assumed to overrule *Marbury v. Madison*,[21] and later cases, which affirmed its constitutional holding that this Court does not have jurisdiction of a suit in the United States against an individual State.

In 1909 this Court held:

> "In a note to United States v. Ferreira, 13 How, on page 52, 14 L.Ed. on page 47, note, which was inserted by order of the court, the chief justice states the substance of the case of the United States v. Todd,' which was decided in February, 1794, but not printed, as there was at that time no official reporter. This note thus concludes:
>
> 'In the early days of the government, the right of Congress to give original jurisdiction to the Supreme Court in cases not enumerated in the Constitution was maintained by many jurists, and seems to have been entertained by the learned judges who decided Todd's case. But discussion and more mature examination has settled the question otherwise; and it has long been the established

[20] See footnote 19, supra.
[21] See footnote 17, supra.

doctrine, and we believe now assented to by all who have examined the subject, that the original jurisdiction of this court is confined to the cases specified in the Constitution, and that Congress cannot enlarge it. In all other cases its power must be appellate.'

Such is the settled rule, and it is inadmissible to suppose that it was the intention of Congress to run counter to it.' "[22]

In 1910, this Court reiterated the same holding.[23]

In 1926, this Court again held:

"The words of a second great constitutional authority quoted as in conflict with the congressional decision are those of Chief Justice Marshall. They were used by him in his opinion in *Marbury v. Madison* (1803) 1 Cranch, 137, 2 L.Ed. 60. The judgment in that case is one of the great landmarks in the history of the construction of the Constitution of the United States, and is of supreme authority first in respect to the power and duty of the Supreme Court and other courts to consider and pass upon the validity of acts of Congress enacted in violation of the limitations of the Constitution when properly brought before them in cases in which the rights of the litigating parties require such consideration and decision, and second in respect to the lack of power of Congress to vest in the Supreme Court original juris-

[22] B. & O. R.R. Co. v. Interstate Commerce Comm., 215 US 216, 30 S.Ct. 86, 88, 89, 54 L.Ed. 164.

[23] Muskrat v. United States, 219 US 346, 31 S.Ct. 250, 252, 55 L.Ed. 246.

diction to grant the remedy of mandamus in cases which by the Constitution it is given only appellate jurisdiction."[24]

Such a solemn constitutional pronouncement exposes the utter lack of the competency of the United States to sue an individual State, and the lack of original jurisdiction in this Court to entertain such a suit, in spite of the fact that this Court has entertained such jurisdiction in cases where serious and proper consideration was not given to the constitutional principle, which denies this Court such original jurisdiction, and which also denies to Congress the right to grant this Court such jurisdiction.

Therefore, we submit the Act of Congress which attempted to grant this Court original jurisdiction in controversies between the United States and a State is unconstitutional, and this Court should so hold.

IV

NEITHER THE UNITED STATES NOR THE STATE OF LOUISIANA MAY BE SUED WITHOUT ITS CONSENT.

In the event this Court should hold that it has original jurisdiction of a controversy between the United States and a State, to hold that it has jurisdiction in this suit of the United States against the State of Louisiana, it would have to do violence to the

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[24] Myers v. United States, 272 US 52, 47 S.Ct. 21, 23, 71 L.Ed. 160.

fundamental principle that a sovereign State may not be sued without its consent.

This Court has held that the United States as a sovereign could not be sued by a State in the original jurisdiction of this Court, without its consent.[25]

This Court has held that a State, as a sovereign, could not be sued in the original jurisdiction of this Court by a foreign nation, without its consent.[26]

This Court held that since a State could not be sued outside of this Court, without its consent, it could not be sued in this Court, without its consent; and that the second clause of Section 2 of Article III of the Constitution, which conferred jurisdiction upon this Court, "In all cases . . . in which a State shall be a party" withheld the consent of a State to be sued by anybody.

The Court held that this clause of the Constitution merely distributed into original and appellate jurisdiction the jurisdiction previously conferred, and did not of itself confer additional jurisdiction.

In this connection, the Court's attention is directed to the fact that Article III, Section 2 of the Constitution specifically extends the judicial power to cases between a State and foreign States. Still this Court held that the foreign State of Monaco could not sue the State of

[25] Kansas v. United States, 204 US 331, 27 S.Ct. 388, 51 L.Ed. 510.

[26] Monaco v. Mississippi, 292 US 313, 54 S.Ct. 745, 78 L.Ed. 1282.

Mississippi without its consent. Therefore, plainly the grant of jurisdiction does not destroy the States' sovereign power of immunity from suit.

Neither can the provision of an Act of Congress, Title 28, United States Code, Section 1251 (b)(2), purporting to grant this Court original jurisdiction of controversies between the United States and a State, deprive a State of its sovereign power of immunity from a suit without its consent.

Regardless of the fact that this Court may have entertained jurisdiction of suits by the United States against States in other cases, defendant, the State of Louisiana, urges with all possible emphasis that there is not such constitutional grant of authority to this Court to entertain a suit of the United States against a State, nor is there any provision of the Constitution which can be interpreted to deprive a State of its sovereign immunity of suit without its consent.

Nor can any provision of the Constitution be found which grants to Congress the authority by legislation to deprive a State of its sovereign immunity of suit without its consent.

This Court in *Hans v. Louisiana, 134 US 1, 16, 10 S. Ct. 504, 33 L.Ed. 842*, held that, "The suability of a state without its consent was a thing unknown to the law."

No more recent reiteration of this principle could be found than the action of this court on June 4th, 1956,

wherein by denying writ of certiorari this court affirmed the United States Court of Appeals for the Fifth Circuit in the case of *Louisiana Land and Exploration Company vs. Louisiana State Mineral Board*, No. 15531, that court holding:

> "It is therefore plain that the State Mineral Board cannot be enjoined in this suit since the compulsion which the court is asked to impose would be compulsion against the sovereign; and for that reason the suit is barred by the Eleventh Amendment, not because it is a suit against the Board, but because it is, in effect, a suit against the State."

Therefore, by any rule of judicial interpretation, it must be held that the provision in Title 28, United State Code, Section 1251 (b)(2), does not grant to this Court jurisdiction of a suit by the United States against the State of Louisiana without the consent of this State to be sued.

WHEREFORE, the State of Louisiana prays that this motion to dismiss on jurisdictional grounds be sustained, and the complaint of the United States herein against the State of Louisiana dismissed; that, in the event the court should overrule said motion, the State of Louisiana, pursuant to its reservation of rights, be granted leave to answer further to the

merits of the bill of complaint and that it be granted a period of thirty (30) days within which to take said action.

All of which is respectfully submitted,

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PROOF OF SERVICE

I, ..., one of the Attorneys for the State of Louisiana, defendant herein, and a member of the Bar of the Supreme Court of the United States, certify that on the ..... day of ....., 1956, I served copies of the foregoing Motion to Dismiss on Jurisdictional Grounds, With Supporting Brief, by leaving copies thereof at the offices of the Attorney General and of the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D. C.

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In the Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

MOTION FOR ENTRY OF DEFAULT AND FOR LEAVE TO PROCEED EX PARTE AND BRIEF IN SUPPORT OF MOTION

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 11, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

MOTION FOR ENTRY OF DEFAULT AND FOR LEAVE TO PROCEED *EX PARTE*

The United States of America moves the Court to enter the default of the defendant and to grant leave to the United States to proceed herein *ex parte*.

This motion is made upon the ground that the defendant has not filed an answer to the complaint within the time allowed by the Court, or at all.

HERBERT BROWNELL, JR.,
Attorney General.

J. LEE RANKIN,
Solicitor General.

AUGUST 1956

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 11, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

BRIEF IN SUPPORT OF MOTION FOR ENTRY OF DEFAULT AND FOR LEAVE TO PROCEED *EX PARTE*

JURISDICTION

The Court has original jurisdiction of this suit under Article III, Section 2, Clauses 1 and 2, of the Constitution of the United States and 28 U.S.C. 1251(b)(2). On March 26, 1956, the Court entered its order granting the United States leave to file its complaint herein. 350 U.S. 990.

QUESTION PRESENTED

Whether the defendant in an original suit is in default where the Court over objection permits filing of the complaint and allows the defendant time to "answer" and the defendant within the time allowed files no answer but only a motion to dismiss.

STATEMENT

On June 5, 1950, this Court held that rights in the submerged lands and minerals underlying the Gulf of

Mexico, extending twenty-seven marine miles seaward from the ordinary low-water mark and outer limit of inland waters along the coast of Louisiana, belonged to the United States and not to the State. *United States* v. *Louisiana*, 339 U. S. 699. On December 11, 1950, the Court entered its decree in that case, enjoining Louisiana from removing minerals from the described area or carrying on activities thereon for that purpose, and requiring it to account to the United States for sums derived from the area after June 5, 1950, and due to the United States under the opinion, decree, and applicable principles of law. 340 U.S. 899.

By the Submerged Lands Act of May 22, 1953, Congress granted to the State, with certain exceptions, the submerged lands within its boundaries as those boundaries existed when the State entered the Union or as approved by Congress prior to the Act, or as extended to a distance of three marine miles, but in no event more than three leagues, from the coast line. "Coast line" was defined as the line of ordinary low water along that portion of the coast which is in direct contact with the open sea, and the line marking the seaward limit of inland waters. The Act released the claim of the United States against the State or persons acting under its authority, for sums derived from the area so granted. 67 Stat. 29, 43 U.S.C. (1952 ed.) Supp. III, 1301-1315.

Louisiana claims that its boundary is three leagues from the coast, and that it accordingly received a grant of that extent under the Submerged Lands Act. The United States claims that the State's boundary is not more than three marine miles from the coast, and that the grant was correspondingly limited. Taking this

position that the area granted to Louisiana by the Submerged Lands Act extended seaward only three marine miles from the coast line, the United States on May 19, 1955, moved the Court to modify its injunction of December 11, 1950, to relieve the State of so much thereof as related to submerged lands within three marine miles of the coast line, and moneys derived therefrom. The State challenged the jurisdiction of the Court to modify its injunction after expiration of the term in which it was entered, and the Court on October 10, 1955, denied the Government's motion without opinion. *United States* v. *Louisiana*, 350 U.S. 812.

Thereafter, on December 19, 1955, the United States moved for leave to file its complaint in the present suit, to quiet its title to the submerged area more than three miles from the coast. A copy of the complaint accompanied the motion. On February 20, 1956, Louisiana filed its "Opposition to Motion for Leave to File Complaint against the State of Louisiana, and Brief in Support of Opposition." On March 26, 1956, this Court entered its order as follows (350 U.S. 990):

> The motion for leave to file the complaint is granted and the defendant is allowed 30 days within which to answer.

On April 10, 1956, the defendant applied to the Court for an extension of time for an additional 60 days within which to "plead and answer," upon the ground that a new Attorney General of Louisiana was about to take office and that resulting complications would necessitate such an extension. The United States did not oppose the application. On April 16, 1956, the

State was granted an extension of 60 days "within which to file answer."

On May 11, 1956, just a week before its new Attorney General took office, Louisiana filed in the Fourteenth Judicial District Court, Parish of Calcasieu, State of Louisiana, an action numbered 38,780 and entitled *State of Louisiana* v. *Anderson-Pritchard Oil Corporation et al.* to enjoin federal officials from issuing leases of submerged land off the Louisiana coast. A temporary restraining order was issued, following which the case was removed to the United States District Court for the Western District of Louisiana, where the restraining order was modified as to non-federal defendants. On June 11, 1956, while remand proceedings were pending in the district court, this Court, on the motion of the United States, enjoined the Attorney General of Louisiana, and others, from prosecuting that suit or "any other case or cases involving the controversy before this Court." 351 U.S. 978.

On June 20, 1956, the State of Louisiana, through its Attorney General, filed in the Civil District Court, Parish of Orleans, State of Louisiana, a suit numbered 346,701 and entitled *State of Louisiana* v. *Humble Oil Company*, to require the Humble Oil Company to account for royalties on oil produced from land on which the State had issued it a lease, and which is part of the land to which the United States seeks to quiet its title against the State in the present case.

On June 22, 1956, the State of Louisiana filed herein its "Motion to Dismiss on Jurisdictional Grounds." It has filed no answer.

ARGUMENT

I

Defendant Has Not Answered as Required by the Court

The Court's order of March 26, 1956, allowed the defendant 30 days "within which to answer" (350 U.S. 990) and the order of April 16, 1956, as shown on the docket, allowed the defendant an additional 60 days "within which to file answer." Obviously, the Court is itself in the best position to know what it intended by those orders; but it is the understanding of the United States that the orders are not complied with by the filing of a motion to dismiss.

The Government's construction of the orders is supported by cases holding that a district court order extending time to "answer" does not permit the filing of a defensive motion, *Ju Shu Cheung* v. *Dulles*, 16 F.R.D. 550, 552 (Mass.); *Blackner* v. *Sun Oil Co.*, 2 F.R.S. 29 (N.J.) (time to "respond"); although there is also authority to the contrary.[1] See 2 Moore, *Federal Practice* (2d ed. 1948) 2235. The fact that the defendant had asked for an extension of time to "plead and answer" in the present case gives particular significance to the fact that the extension order of April 16 refers to an "answer" only.

Whatever reasons there may be for construing time to "answer" in a district court as including time to move for dismissal, such reasons are wholly absent in an original suit in this Court. The Federal Rules of Civil Procedure, while permitting both legal and factual defenses to be asserted by answer, allow a defend-

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[1] *Auler* v. *Melrose*, 102 F.Supp. 28 (N.D. Ill.) (stipulation extending time to "answer"); *Blanton* v. *Pacific Mut. Life Ins. Co.*, 4 F.R.D. 200 (W.D. N.C.), appeal dismissed, 146 F.2d 725 (C.A. 4).

ant the option of filing one, and only one, motion to dismiss by which he may assert legal defenses, the filing of which extends his time for answering. Rule 12, F.R.C.P. Since the rule permits the filing of such a motion within the time allowed for answering, there may be justification for holding that an order extending time to "answer" also extends time for making such a motion, and that more explicit language is needed to show an intention that a defendant is to be deprived of his privilege of asserting legal defenses in advance of factual ones.

The situation in an original suit in this Court is quite different. Here a complaint can be filed only by leave of Court, on motion. Rule 9(5) of this Court allows the defendant sixty days within which to oppose that motion—three times as long as the twenty days allowed for an answer or motion to dismiss in a district court. Any legal defense may be asserted by such opposition. For example, the Court has denied leave to file where original jurisdiction was lacking, *Oklahoma* v. *Cook*, 304 U. S. 387; *Florida* v. *Mellon*, 273 U.S. 12; where the complaint was multifarious and lacked equity, *Alabama* v. *Arizona*, 291 U.S. 286; where an indispensable party was not joined, *Arizona* v. *California*, 298 U.S. 558; where the suit was in substance against the United States, *Louisiana* v. *McAdoo*, 234 U.S. 627; where a bill to perpetuate testimony did not show that the testimony would be relevant or material to the anticipated litigation, *Arizona* v. *California*, 292 U.S. 341; and where the proposed complaint did not state a good cause of action. *Alabama* v. *Texas*, 347 U.S. 272. Thus, the defendant in an original suit has ample opportunity before the complaint is filed to

make a separate assertion of his legal defenses, and when leave to file is granted he stands in a position analogous to that of a district court defendant whose motion to dismiss is denied and who must thereupon answer. The answer in either Court may, of course, include legal defenses; and in that respect a defendant is in a better position here than in a district court, for a motion to dismiss waives all legal defenses that it does not assert, except certain fundamental matters such as lack of jurisdiction (Rule 12(g), (h), F.R.C.P.), whereas opposition to filing a complaint does not have that effect.

No doubt, considerations like these entered into the formulation of Rule 9(6) of this Court, which departs from the Federal Rules of Civil Procedure to provide that "Additional pleadings may be filed, and subsequent proceedings had, as the court shall direct." Such considerations may also explain why the Court, in directing the pleadings in the present case, allowed the defendant time to "answer" only, without giving a second opportunity to make preliminary assertion of legal defenses. In any event, the fact is that the Court allowed the defendant until June 25, 1956, to file an answer. That date is long past, and no answer has been filed.

II

Default Should Be Entered and the United States Allowed to Proceed *Ex Parte*

The case presents no circumstances that should move the Court to withhold entry of default. The defendant's failure to file an answer cannot be attributed to any insufficiency of time within which to consider the allegations of the complaint. While leave to file the

complaint was not granted until March 26, 1956, the complaint itself has been in defendant's hands since the motion for leave to file was served on it, December 19, 1955. Furthermore, the position taken in the complaint is identical with that asserted by the United States in its motion to modify the injunction in *United States* v. *Louisiana*, No. 7, Original, October Term, 1954, served on the defendant with a supporting brief on May 19, 1955. Thus, the defendant has had substantially more than a year in which to consider not only the Government's allegations but also the arguments by which it supports them. There is no apparent reason why an answer could not have been formulated within the six months and more that elapsed between service of the complaint on the defendant with the application for leave to file and expiration of the time allowed by the Court for filing an answer. The defendant has found that interval sufficient for filing two new suits involving the same questions: *State of Louisiana* v. *Anderson-Pritchard Oil Corporation et al.*, filed in the Fourteenth Judicial District Court, Parish of Calcasieu, State of Louisiana, on May 11, 1956, before such suits were enjoined herein by this Court on June 11, 1956, and *State of Louisiana* v. *Humble Oil Company*, filed in the Civil District Court, Parish of New Orleans, State of Louisiana, on June 20, 1956.

Neither can the State's failure to answer be attributed to any legal necessity for preserving its position by moving for dismissal. Rule 12(b), F.R.C.P., clearly permits assertion of all legal defenses by answer.

In addition, it is significant that the State took occasion to oppose the motion for leave to file the complaint on several grounds, and presented a detailed brief in

opposition to the filing. However, the jurisdictional grounds now asserted in the State's motion to dismiss were not raised at that time, although the grounds were well known to the State from previous litigation relating to the offshore lands.

The only conclusion to be drawn is that the defendant filed its motion to dismiss, rather than answer, for the purpose of delay; and this inference is strongly supported by the insubstantiality of the grounds on which the motion is made (see the Government's Brief in Opposition to the State's motion, which is being filed simultaneously), and by the fact that the defendant is initiating and prosecuting other litigation involving ownership of the area here in suit. Delay in the determination of this case imposes heavy economic burdens on the numerous lessees in the disputed area and on thousands of their employees whose work cannot go forward until the dispute is settled and it prevents orderly development of mineral resources that are highly important to the national economy and defense. The defendant's institution of other litigation presenting the same issue of disputed ownership causes unjustifiable expense and inconvenience to the defendants therein.

In asking for entry of default we do not overlook the practice of this Court to be liberal in allowing full development of the facts in original actions involving controversies between sovereigns. *United States* v. *Texas*, 339 U.S. 707, 715. Nevertheless, we press our motion since the State of Louisiana appears to have no desire to develop the facts. Meanwhile, its other actions in the area are causing great confusion and expense.

Under all these circumstances, it is submitted that the Court should enter the defendant's default and grant the United States leave to proceed ex parte, as under Rule 9(8) of this Court.

CONCLUSION

For the foregoing reasons, default should be entered and leave granted to the United States to proceed *ex parte*.

Respectfully submitted,

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AUGUST 1956

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In the Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

BRIEF FOR THE UNITED STATES IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS ON JURISDICTIONAL GROUNDS

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 11, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

BRIEF FOR THE UNITED STATES IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS ON JURISDICTIONAL GROUNDS

JURISDICTION

The Court has original jurisdiction of this suit under Article III, Section 2, Clauses 1 and 2, of the Constitution of the United States and 28 U. S. C. 1251(b)(2). On March 26, 1956, the Court entered its order granting the United States leave to file its complaint herein. 350 U.S. 90.

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

Article III, Section 2, of the Constitution of the United States provides:

> The judicial Power shall extend * * * to Controversies to which the United States shall be a Party; * * *
>
> In all Cases affecting Ambassadors, other public

Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. * * *

Title 28, United States Code, Section 1251(b), provides:

The Supreme Court shall have original but not exclusive jurisdiction of:

* * * * *

(2) All controversies between the United States and a State;

* * * * *

QUESTIONS PRESENTED

1. Whether this Court lacks jurisdiction to render a decision that involves ascertaining how a political question has been decided by the political branches of the Government.

2. Whether this Court lacks original jurisdiction of a suit by the United States against a State.

3. Whether the State of Louisiana is immune from suit by the United States without the consent of the State.

STATEMENT

On June 5, 1950, this Court held that rights in the submerged lands and minerals underlying the Gulf of Mexico, extending twenty-seven marine miles seaward from the ordinary low-water mark and outer limit of inland waters along the coast of Louisiana, belonged to the United States and not to the State. *United States* v. *Louisiana*, 339 U. S. 699. By the Submerged Lands Act of May 22, 1953, Congress granted to the State, with exceptions not now material, the submerged lands

and minerals within the State's boundaries as those boundaries existed at the time when the State entered the Union or as approved by Congress prior to the Act, or as extended to a distance of three marine miles, but in no event more than three leagues, from the coast line. "Coast line" was defined as the line of ordinary low water along that portion of the coast which is in direct contract with the open sea, and the line marking the seaward limit of inland waters. 67 Stat. 29, 43 U.S.C. (1952 ed.) Supp. III, 1301-1315. Louisiana claims that its boundary is, and was when it entered the Union, three leagues from the coast; consequently it claims title under the Submerged Lands Act to the submerged lands and minerals extending to that distance. The United States contends that the national boundary is three marine miles from the coast, and that the State boundary and the grant made by the Submerged Lands Act extend no greater distance. On December 19 ,1955, the United States served on the defendant and filed with the Court its motion for leave to file its complaint herein to quiet its title to the submerged lands and minerals lying more than three marine miles from the coast of Louisiana. Louisiana's "Opposition to Motion for Leave to File Complaint against the State of Louisiana, and Brief in Support of Opposition" was filed on February 20, 1956. On March 26, 1956, this Court granted the motion of the United States and allowed the State 30 days to answer. 350 U.S. 990. By order of April 16, 1956, the State's time to answer was extended 60 days, or until June 25, 1956. The State's motion to dismiss on jurisdictional grounds was filed on June 22, 1956. No answer has been filed.

ARGUMENT

I

It Is Not Beyond the Jurisdiction of this Court to Ascertain How a Political Question Has Been Decided by the Political Branches of the Government

By the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. (1952 ed.) Supp. III, 1301-1315, the United States granted to coastal States certain submerged lands within their boundaries. The United States now seeks to quiet title to submerged lands more than three nautical miles from the coast of Louisiana, upon the ground that the boundary of the nation, and therefore that of the State, is no more than that distance from the coast. Louisiana asserts as the first ground in support of its "Motion to Dismiss on Jurisdictional Grounds" (pp. 1-2, 5-8) that the case consequently involves decision of a political question, which is beyond the jurisdiction of the courts.

The contention is unsound. The United States does not ask the Court to make a policy determination establishing the national boundary. It asks the Court to ascertain where the boundary has been established by the political branches of the Government, and to adjudicate the rights of the parties in accordance therewith. This Court has repeatedly recognized its jurisdiction to entertain a suit of such character.

In *Vermilya-Brown Co.* v. *Connell*, 335 U.S. 377, 380, the Court said, "Recognizing that the determination of sovereignty over an area is for the legislative and executive departments * * * does not debar courts from examining the status resulting from prior action." The cases cited by Louisiana are to the same effect. All were cases where the decision depended on questions of sovereignty, either domestic or foreign.

None was dismissed as beyond the jurisdiction of the courts. All were decided on their merits, upon the premise that as to the political question the Court was bound to accept and give effect to the determination made by the political branches of the Government. The passages that Louisiana quotes (pp. 6-8) do not say, as the State seems to suppose, that the Court cannot inquire how the political branches have answered political questions. What they do say is that the Court cannot inquire as to "the propriety of what may be done" by the political branches (*Oetjen* v. *Central Leather Co.*, 246 U.S. 297, 302), that "its duty commonly is, to decide upon individual rights, according to those principles which the political departments of the nation have established" (*Foster & Elam* v. *Neilson*, 2 Pet. 253, 307), and that national boundary is a political question, in the discussion of which "the courts of every country must respect the pronounced will of the legislature" (*Garcia* v. *Lee*, 12 Pet. 511, 517). The United States is of course in complete agreement with that view.

There is likewise no merit in Louisiana's contention (Br. 8) that, in leaving to this Court the determination of disputes regarding the location of State boundaries, Congress attempted to delegate its legislative powers. The settlement of disputes as to the results of past actions, political or otherwise, is a judicial and not a legislative function.

II

This Court Has Original Jurisdiction of Suits by the United States Against States

Article III, Section 2, Clause 1, of the Constitution provides that the federal judicial power extends to

controversies to which the United States is a party. The United States is the plaintiff. Consequently the case is within the federal judicial jurisdiction.

Article III, Section 2, Clause 2, of the Constitution provides that this Court shall have original jurisdiction of cases in which a State is a party. The State of Louisiana is the defendant. The case is therefore within the original jurisdiction of this Court. Title 28, U.S.C., Section 1251(b), is to the same effect.

Louisiana relies (Br. 15-16) on *Cherokee Nation* v. *Georgia*, 5 Pet. 1, for the proposition that "the United States is not a state, or a foreign State which may sue in the Supreme Court, in the sense in which the terms are used in the Constitution" (Br. 16). In that case an Indian tribe sought to sue a State. The Court held that the case did not come within any head of federal judicial jurisdiction under Article III, Section 2, Clause 1, of the Constitution—specifically, that the suit was not one between a State and a foreign state, as the plaintiff contended. *Lane* v. *Pueblo of Santa Rosa*, 249 U.S. 110, 112-113. As shown above, the present suit comes under another head of federal jurisdiction: controversies to which the United States is a party. Accordingly, the *Cherokee Nation* case is irrelevant.

Louisiana says (Br. 18-19):

> Regardless of the fact that this Court may have rendered judgments in other cases of the United States against particular states, such does not constitute *stare decisis* or precedent prejudicial to the State of Louisiana herein.
>
> * * * * *
>
> In such cases the fact that other states, either by design or oversight consented to be sued, or failed

to raise the constitutional objection to lack of jurisdiction in this Court to entertain such action by the United States against a particular state, cannot be considered as authority over-riding the action of the Constitutional Convention in refusing to grant this Court original jurisdiction in such controversies.

The fact is that in the case of *United States* v. *Louisiana*, No. 13, Original, October Term, 1948, and No. 12, Original, October Term, 1949, and October Term, 1950, the State of Louisiana challenged the jurisdiction of this Court in ten different documents filed at various stages of the case, nine of which urged the point now under discussion.[1] This Court overruled the contention in each instance. *United States* v. *Louisiana*, 337 U.S. 902; 337 U.S. 928; 338 U.S. 806; 339 U.S. 699, 701-702; 340 U.S. 856; 340 U.S. 939. It should do the same here. Indeed, having failed to prevail on that issue in earlier litigation with the United States, Louisiana

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[1] Supplemental Memorandum of Louisiana in Support of Its Objections to Motion by the Federal Government for Leave to File a Complaint against Louisiana (filed Feb. 9, 1949), pp. 5-7; Brief in Opposition to the Motion of the Federal Government for Leave to File a Complaint against Louisiana (filed May 5, 1949), pp. 2-4, repeated practically verbatim by Louisiana's present Brief in Support of Motion to Dismiss on Jurisdictional Grounds, pp. 10-12; Petition for Rehearing (filed May 31, 1949), p. 6; Demurrer, or Motion to Dismiss on Jurisdictional Grounds, and Conditional Motions (filed Sept. 1, 1949), pp. 3-10, repeated practically verbatim by Louisiana's present Brief in Support of Motion to Dismiss on Jurisdictional Grounds, pp. 10-19; Answer (filed Nov. 9, 1949), Second Defense, Par. I, p. 4; Brief of Defendant Opposing Plaintiff's Motion for Judgment and Supporting Defendant's Motion to Dismiss and Other Defenses (filed March 20, 1950), p. 2; Petition for Rehearing (filed July 14, 1950), Par. I, pp. 1-2; Petition for Rehearing on Decree (filed Jan. 26, 1951), pp. 2-3; and Petition for Rehearing from Decree (filed Jan. 26, 1951, at Pt. II of the preceding Petition), pp. 2-5.

should be estopped to raise the point now. There has been a decisive former adjudication between the parties on this very question.

III

The United States Can Sue the State of Louisiana Without the Consent of the State

The United States can sue the State of Louisiana without the consent of the State. *United States* v. *Louisiana*, 339 U.S. 699, 701-702; *United States* v. *Texas*, 143 U.S. 621; see *United States* v. *West Virginia*, 295 U.S. 463, 470.

CONCLUSION

The motion to dismiss on jurisdictional grounds should be denied.

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No. 11 ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

REPLY BRIEF OF THE STATE OF LOUISIANA ON MOTION TO DISMISS ON JURISDICTIONAL GROUNDS

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REPLY BRIEF OF THE STATE OF LOUISIANA ON MOTION TO DISMISS ON JURISDICTIONAL GROUNDS

QUESTIONS PRESENTED

1. Whether this Court has jurisdiction to determine the boundaries of Louisiana when Congress has passed no law locating such boundaries.

2. Whether this Court has the power to determine the foreign policy of the United States with respect to its territorial claims against nations and with respect to the freedom of the seas and the jurisdiction of the State and the nation therein.

3. Whether this Court has original jurisdiction of a suit brought by the United States against a sovereign State without the consent of the latter.

STATEMENT

The preliminary statement in the brief of the United States sets forth the chronology of the procedure in this cause up to the present time. It inaccurate-

ly sets forth the purpose and effect of the Submerged Lands Act of May 22, 1953, and incorrectly states what Louisiana's claims are with respect to its boundaries in the Gulf of Mexico. These matters are, however, irrelevant to the question as to the power of this Court to hear and determine this cause. Louisiana will at the proper time set forth in detail its claims and will present its views concerning the purpose and effect of the Submerged Lands Act.

ARGUMENT

I

THIS CONTROVERSY INVOLVES POLITICAL QUESTIONS BEYOND THE JURISDICTION OF THIS COURT

The United States, which will sometimes be be referred to as the Government or the Plaintiff for convenience, has incorrectly stated the first question presented to this Court. A reading of the complaint and the brief in support thereof shows that this Court has been asked to ascertain the international boundary of the United States and the seaward boundary of the State of Louisiana; (which this Court has always stated as identical) although such boundary has not been fixed by the political branches of the Government, and to establish the rights of the United States in the bed of the Gulf of Mexico extending from the State boundary seaward to the edge of the Continental Shelf, and for such purpose to determine the foreign

policy of the United States with respect to its territorial claims against other nations and with respect to recognition of freedom of the seas. What the Government seeks is to have a declaration of principles of international law which are peculiarly the function of the political branches of the Government.

Paragraph 2 of the complaint alleges that the United States "is entitled to exclusive possession of, and full dominion and power over the lands, minerals and other things underlying the Gulf of Mexico, extending seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Louisiana to the edge of the Continental Shelf." The prayer of the complaint is that this Court declare the rights of the United States in these properties "extending seaward to the edge of the Continental Shelf;" and to require the State of Louisiana to account for money derived from these properties.

On page 9 of the Government's brief in support of its motion for leave to file the complaint, the purpose of this litigation is stated as follows:

> "The purpose of this litigation is to establish the rights of the United States in the lands and natural resources of the bed of the Gulf of Mexico . . . extending seaward to the edge of the Continental Shelf."

The Government's original brief in support of the complaint incorrectly refers to the Submerged Lands Act as a grant in favor of the State and states

the purpose of Congress in passing the Act, as follows: (Page 11)

> "Congress intended the grant to be coextensive with the State boundary, wherever that boundary might be . . . Congress expressed no view as to the location of the boundary, intending and expecting any dispute regarding its location to be determined by this Court."

In a footnote Plaintiff's brief quotes the Congressional Record on this subject.

Plaintiff's present brief (p. 4) indicates that Louisiana's boundary has already been established by the political branches of the government and that the United States merely seeks a judicial declaration in accordance therewith, but in the complaint and in the original brief (p. 11) the Government says that this boundary has not been established.

If Congress has not fixed the state's boundary, this Court cannot fix it. Nor can the Congress delegate this power to the Court.

Furthermore, on page 13 of its original brief the United States say that "Louisiana's boundary, when it was admitted to the Union, was limited to the extent of the National Maritime Boundary." Although the Government apparently seeks from this Court a declaration that the National Maritime Boundary extends to the edge of the Continental Shelf, it in so many words admits that the boundary of Louisiana and the National Maritime Boundary are coextensive. This Court has, of course, always stated that the

boundaries of the United States are coextensive with and do not extend beyond the boundaries of the coastal States.[1]

It therefore appears that the position that is now taken by the Government conflicts with and is inconsistent with the position that it took in the complaint and its brief in support thereof.

II

THIS COURT HAS NO POWER TO DETERMINE THE FOREIGN POLICY OF THE UNITED STATES NOR TO FIX ITS TERRITORIAL LIMITS.

Although the Government now states that the purpose of this suit is to ascertain where Louisiana's boundaries have been established by the political branches of the Government and that this requires the settlement of a dispute as to the results of past actions by said branches of the Government, this is not the purpose of the original complaint. As pointed out above, the prayer of the complaint calls for a decree to establish the rights of the United States in the bed

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[1] Harcourt v. Gaillard, 12 Wheat. 523, 6 L.Ed. 716;
Dred Scott v. Sanford, 19 How. 393, 446-449, 15 L.Ed. 691, 718-9;
Brown v. Grant, 116, U.S. 207, 212, 29 L.Ed. 598;
Commonwealth of Mass. v. Manchester, 152 Mass. 230, 25 N.E. 113, 116, aff'd, 139 US 240, 11 S. Ct. 559, 35 L.Ed. 159;
Van Brocklin v. Anderson, 117 US 151, 168, 29 L.Ed. 845, 851.

of the Gulf of Mexico, and the brief in support of this complaint states that the boundaries of the State and nation have not been fixed in the Acts of Congress relied upon by the Plaintiff. Following this, the Government's original brief states that although the immediate issue concerns the extent of Louisiana's proprietary rights and jurisdiction in the Gulf of Mexico, nevertheless, it also says:

> "The Case requires inquiry into and application of the foreign policy of the United States, on the one hand with respect to its territorial claims against other nations, and on the other hand with respect to its assertion and recognition of freedom of the seas." (Orig. Br. p. 16)

The authorities cited in the State's brief in support of its motion to dismiss on jurisdictional grounds settled the proposition that these political questions cannot be determined by this Court.

III

THIS COURT HAS NO JURISDICTION FOR SUIT WITH THE UNITED STATES AGAINST A SOVEREIGN STATE WHERE THE LATTER HAS NOT GIVEN ITS CONSENT TO BE SUED.

In our original brief we pointed out that the Constitution nowhere provides for a suit by the United States against a State, and that the original jurisdiction of this Court, cannot be enlarged or extended by an Act of Congress. We also pointed out,

that the Eleventh Amendment prohibited suit against any State without its consent.

However, on page 7 of the Government's brief in opposition to the motion to dismiss on jurisdictional grounds, the point is made that in the original case of *United States v. Louisiana* the State "challenged the jurisdiction of this Court in 10 different documents filed at various stages of the case, 9 of which urged the point now under discussion." Plaintiff would have the Court conclude that Louisiana made 9 separate and distinct attacks on the Court's jurisdiction in that case and implies that the present motion to dismiss is simply a reiteration of former objections to the jurisdiction which this Court overruled. The statement and the implication are inaccurate. Louisiana did object to the assumption of jurisdiction in this Court in the former case, and in each subsequent filing attempted to reserve its rights under that objection. The Court overruled the former plea to the jurisdiction without comment in a memorandum decision in *United States v. Louisiana*, 338 US 806, 94 L.Ed. 488. The Court's decision on this plea was undoubtedly influenced by the view that it had already expressed in *United States v. California*, 332 US, 199 L.Ed. 1889 to the effect that the coastal States do not own any of the lands and minerals lying seaward from the ordinary low-water mark. The theory supporting this conclusion was nullified by Congress when it passed the Submerged Lands Act. As stated in *Superior Oil Com-*

pany v. Fontenot, 213 F.2d 565, 569, Cert. Den. 348 US 378, 99 L.Ed. 660:

> "So here, when the long and heated struggle over the title and right to possession of the land, which had been waged between the government and the state, came to an end in Public Law 31, the state and appellants, as its lessees, found themselves in one of two positions equally favorable in law. By virtue of the act which nullified the theory on which the opinion and decree of the Supreme Court had been based, they must be held, notwithstanding the opinion of the Supreme Court, to have always and at all times had the title and right of possession."

Since the theory supporting the Court's conclusions in the *California Case* and in the subsequent cases of the United States against Louisiana and Texas has been nullified, it is appropriate for the Court to reconsider the question of jurisdiction at this time.

It is furthermore necessary to look into the question of jurisdiction again because this particular proceeding involves questions which were not raised in the other cases and the motion to dismiss is based upon matters that are not the same as those decided by the Court on Louisiana's plea to the jurisdiction in the original case.

For instance, none of the subject matter discussed in the two preceding sections was presented in the original plea to the jurisdiction, and supporting

brief in the original Louisiana case. Nor were the questions raised concerning the constitutional limitations and provisions regarding the original jurisdiction of this Court discussed as fully then as they are now in the motion and brief filed by the State in this proceeding.

The Government states that since Louisiana was overruled on the question of jurisdiction in the earlier litigation, it "should be estopped to raise the point now." (Orig. Br. P. 7-8) The answer to that is that allegations unsuccessfully urged in prior litigation cannot serve as a basis for estoppel. In any event the doctrine of estoppel is not applicable and the Plaintiff cites no authorities to support its suggestion that an estoppel exists. Perhaps Plaintiff's counsel intended to say that the prior ruling of this Court is res judicata. However, the doctrine of res judicata does not apply to decisions on motions and other pleadings decided during the course of litigation. It is intended to apply to final judgments rendered.

Connally v. L. & N. R. R. Co., 297 Fed 180,
In re *Walton Hotel Co.*, 116 F2d 110;
Continental Oil Co. v. Osage Oil & Ref. Co., 69 F2d 19;
Hill v. United States, 56 S.Ct. 760, 298 US 460, 80 L.Ed. 1283.

CONCLUSION

The motion to dismiss should be sustained, but if the State of Louisiana is required to answer the bill

of complaint then it should be granted a period of 30 days at least within which to file its answer.

Respectfully submitted,

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PROOFS OF SERVICE

I, ..., one of the Attorneys for the State of Louisiana, defendant herein, and a member of the Bar of the Supreme Court of the United States, certify that on the ..... day of ....., 1956, I served copies of the foregoing Reply Brief of the State of Louisiana on Motion to Dismiss on Jurisdictional Grounds, by leaving copies thereof at the offices of the Attorney General and of the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D. C.

.....".

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No. 11 ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

OPPOSITION TO PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT AND FOR LEAVE TO PROCEED EX PARTE AND SUPPORTING BRIEF

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In the Supreme Court of the United States

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UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

OPPOSITION TO PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT AND FOR LEAVE TO PROCEED EX PARTE

Now comes the State of Louisiana through undersigned counsel and shows that Plaintiff's motion for entry of default and for leave to proceed ex parte should be denied for the reason that the Plaintiff by requesting and obtaining two separate continuances for the purpose of answering the Defendant's motion to dismiss herein filed on June 22, 1956, has waived its rights, if any it has, to secure a default judgment against the Defendant.

The State of Louisiana further opposes Plaintiff's motion to enter a default against the Defendant and to proceed ex parte for the reason that the Defendant has, within the period of time fixed by the Court for making its answer to the complaint, filed a motion to dismiss the complaint on the ground that this Court is without jurisdiction on the subject matter

of this suit, and is without jurisdiction over the Defendant personally.

The State of Louisiana shows that the motion to dismiss which it has filed herein is permitted by Rule 9 of this Court and Rule 12 of the Federal Rules of Civil Procedure to be filed and disposed of by the Court prior to the filing of an answer on the merits; that the said motion to dismiss on jurisdictional grounds was filed in good faith and not for any purpose of delay and presents serious questions concerning the authority of this Court to hear and determine this cause.

Defendant further shows that in the event that the said motion to dismiss on jurisdictional grounds should be over-ruled by the Court, the State of Louisiana desires to make a full and complete answer to the allegations of the complaint and to make affirmative defenses based upon treaties entered into by the United States, Acts of Congress, and historical facts in support of its claims to the properties described in the complaint; that this controversy involves lands and minerals of great value and raises important questions of law and fact which should not be decided in any ex parte procedure before this Court; and that if the Court should rule that Defendant's motion to dismiss is not in compliance with the orders of this Court, then the Defendant should be afforded an opportunity to file

a formal answer to the complaint on the merits within a reasonable time, following such a ruling by the Court.

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No. 11 ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

BRIEF IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT

JURISDICTION

The State of Louisiana denies that this Court has original jurisdiction of this controversy for the reasons set forth in its motion to dismiss on jurisdictional grounds.

STATEMENT

The statement contained in Plaintiff's brief outlines in chronological order the proceedings that have been had in this controversy up to the present time. However, there are certain statements made by Plaintiff's counsel to which Defendant takes exception.

Louisiana does not claim that it has received any grant from the United States Government under the terms of the Submerged Lands Act. It is Louisiana's contention that the Submerged Lands Act nullified the theory on which the opinions and decrees of this Court were based in the California, Texas and Louisiana

Tidelands Cases and merely recognized the title and right of possession which the coastal states have always had to the submerged lands seaward of their shores and coast lines.[1] In section 3 (b) (1) of the Submerged Lands Act "the United States releases and relinquishes unto said states . . . all right, title and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources;"[2] such a disclaimer of title can hardly be considered as a grant or assignment of title by the United States.

Plaintiff calls attention to the fact that on June 20, 1956, the State of Louisiana filed a proceeding against the Humble Oil and Refining Company in the Civil District Court of the Parish of Orleans for an accounting for certain royalties. While this is irrelevant to the matter now presented to the Court, we may state that this was a suit brought by the State of Louisiana for an accounting under the terms of an oil and gas lease which it executed in favor of the Defendant. The Defendant sought to remove the case to the United States District Court for the Eastern Dis-

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[1]Superior Oil Co. v. Fontenot, 213 F.2d 565, Cert. Den. 348 US 837, 99 L.Ed. 660;
Legislative History of the Submerged Lands Acts; House Report #215 83d Cong., 1st Sess. pages 14, 15, 26, 33, 34, 43-47;
Senate Report #133, 83d Cong., 1st Sess. pages 5, 8, 54, 56-59, 64-68.

[2]Submerged Lands Act May 22, 1953 c. 65, Title II § 3, 67 Stat 30, 43 U.S.C. 1311.

trict of Louisiana on the ground that a Federal question is involved, but the Federal Court remanded the case to the State Court on the ground that the complaint presented no question of title to lands covered by the controversy now pending in this Court.

ARGUMENT

I

PLAINTIFF HAS WAIVED RIGHT TO OBJECT TO MOTION TO DISMISS.

As set forth in Plaintiff's preliminary statement, the State of Louisiana filed its motion to dismiss on jurisdictional grounds on June 22, 1956, which was within the period of time fixed by this Court for answering. Thereafter Plaintiff's counsel requested the Attorney General of Louisiana to agree on a delay of 30 days within which Plaintiff might answer this motion to dismiss. This delay was agreed to and on August 3, 1956 one of the Assistants to the Solicitor General addressed a letter to the Clerk of this Court advising him that the Government had obtained a delay until August 13, 1956 for making its response to Defendant's motion to dismiss and desired an additional delay until August 27, 1956 within which to make such response. The Clerk was advised that the Attorney General of Louisiana had consented to this continuance. Having thus sought and obtained delays within which to respond to the Defendant's motion, the Government has waived any right which it might have to object to the filing of the motion, and has no right to enter the default.

In *Ciccarello v. Schlitz Brewing Company*, 1 F.R.D. 491, 493, the United States District Court for the Southern District of West Virginia held that under

similar circumstances the Plaintiff would waive its right to object to the filing of this motion. In that case the Court said:

> " . . . if the motion were otherwise well founded, it could not be sustained in view of plaintiff's consent to the several continuances, and other proceedings without objection by plaintiff, which were had, constituting a waiver of any right to a default judgment. James' Sons & Co. v. Gott & Ball, 55 W. Va. 223, 57 S.E. 649; Pollard and Haw v. American Stone Co., 111 Va. 147, 68 S.E. 266. . . . It would not be in accord with the theory of default judgments, as stated in Keeler Bros. v. Yellowstone Valley National Bank, D.C., 235 F. 870, to permit plaintiff to take a default judgment by reason of any technical failure of defendants to plead when it is clear from the record that plaintiff has not been prejudiced by defendants not having pleaded and that it might work grave injustice to enter such judgment; nor would it be within the intent and spirit of the new rules to permit it."

II

MOTION TO DISMISS WAS PROPERLY FILED BY LOUISIANA BEFORE ANSWER ON THE MERITS.

Rule 9 paragraph 2 of this Court states that the Federal Rules of Civil Procedure may be taken as a guide to procedure in original actions in this Court, and paragraph 8 of the Rule 9 states that if the De-

fendant shall not *respond* by the return date, the Plaintiff shall be at liberty to proceed ex parte.

Rule 12 (a) of the Federal Rules of Civil Procedure requires a Defendant to serve his *answer* within 20 days after the service of the summons and complaint upon him, unless the Court directs otherwise. In the instant case, the Court directed the Defendant to answer on or before June 28, 1956 and the State of Louisiana responded by filing its motion to dismiss on jurisdictional grounds, on June 22, 1956, which was within the period of time prescribed by the Court for the Defendant's answer.

Although the Defendant is required by Rule 12 (a) to answer within the time directed by the Court, Rule 12 (b) permits the pleader to raise questions regarding lack of jurisdiction over the subject matter and lack of jurisdiction over the person by motion prior to answering on the merits. The service of this motion alters the period of time for answering and grants to the Defendant a delay following the ruling of the Court within which to file an answer (Rule 12 (a)). All of the text-writers agree that this Rule means what it says. Moore in his work on Federal Practice, Volume 2, page 2220 says:

> "Obviously a defendant would quite often prefer to raise certain objections which he believes will be sustained before resorting to the trouble of pleading and answer. This he may do. Under subdivision (b) (Rule 12) he may raise any or all of the following defenses which he may have by

motion; (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person . . . ".

Further commenting on Rule 12 Moore states in Volume 2, page 2235-6:

"Both the original summons and the third-party summons state that the defendant must serve an answer within 20 days after service of the summons, and subdivision (a) contains much the same language. It is clear, however, that the defendant or third-party defendant is not obliged to comply literally with the summons. Rule 12 (a) provides that the service of a motion permitted under the rule alters the periods of time prescribed in Rule 12 (a). Defendant may, if he wishes, present every defense that he has in his answer. If this course is followed the answer must be served within the time discussed below. Obviously in many cases the defendant will desire to raise some defenses or objections prior to answer. As heretofore outlined he may do this pursuant to subdivision (b), (e) and (f), subject to subdivisions (g) and (h), which govern the consolidation of motions and waiver of defenses."

Barron & Holtzoff on their work on Federal Practice and Procedure, Volume 1, Page 595, state:

"Service of a motion permitted by Rule 12 may enlarge the periods of time for serving the answer or other responsive pleading."

The same authorities say on Page 596 of Volume 1:

> "The grant of an extension of time to answer will also extend the time for filing and serving any preliminary motion."

The same authorities also state in Volume 1, Page 630:

> "Indeed, motion to dismiss for suggestion of want of jurisdiction is the appropriate method of attacking want of jurisdiction . . . . jurisdiction is to be determined from the allegations of the complaint, and has nothing to do with the merits."

The foregoing authorities are supported by numerous Court decisions including the following:

Universal Rim Company v. General Motors Corp., (CA6) 20 F. 2d 967, 31 F. 2d 969;
Blanton v. Pacific Mutual Life Insurance Co. (CA4) 4 F.R.D. 200, 146 F. 2d 725;
Faske v. Radbill (E.D.Pa.), 7 F.R.D. 234;
Orange Theatre Corp. v. Rayherstz Amusement Corp., (CA3), 139 F. 2d 871;
Auler v. Melrose, 102 F. Supp. 28;
National Distillers Products Corp. v. Hindeck, 10 F.R.D. 229.

In the case of *Universal Rim Company v. General Motors Corporation*, 20 F. 2d 966, 31 F. 2d 969, the parties had stipulated for an extension of time for the purpose of filing an answer and the Plaintiff took exception to the fact that the Defendant, instead of answering, filed a motion to dismiss. The Court of Ap-

peals for the Sixth Circuit passing upon the matter said:

> "There is no merit in the contention that the court should not have permitted the defendants to file a motion to dismiss, but should have required the filing of an answer. The term 'answer,' as used in the stipulation giving defendants additional time for filing answer, is to be construed, we think, to include a motion to dismiss. New Jersey v. New York, 31 US (6 Pet.) 323, 8 L. Ed. 414; Martin v. Baltimore & O. R. Co., 151 US 673, 14 S. Ct. 533, 38 L. Ed. 311."

The rules of this Court do not provide for any restriction of or limitation on the right of the Defendant to file a motion to dismiss and to have that motion passed on before an answer to the merits is filed. If this Court intended that all objections to the complaint and all questions as to jurisdiction should be raised either in opposition to Plaintiff's motion or leave to file the complaint, or in the answer to the merits, the Rules of this Court would have said so, but instead of making such a requirement, this Court states in its rules that the Federal Rules of Civil Procedure "may be taken as a guide to procedure in original actions in this Court." This Court has held that its order for the filing of an answer in any case is satisfied by the filing of a demurrer, or motion to dismiss. The case of the *State of New Jersey v. State of New York*, 6 Pet. 323, 31 US 323, 8 L. Ed. 414 is ample authority for this statement. The first opinion in this case is reported in 5 Pet. 284,

28 US 461, 8 L. Ed. 127, and at the end of that opinion Chief Justice Marshall issued the following order:

> " . . . the defendant having failed to appear, it is, on motion of the complainant, decreed and ordered that the complainant be at liberty to proceed ex parte; and it is further decreed and ordered that unless the defendant, being served with a copy of this decree sixty days before the ensuing August Term of this court, shall appear on the second day of the next January Term thereof and answer the bill of the complainant, this court will proceed to hear the cause on the part of the complainant, and to decree on the matter of the said bill."

After the Defendant had been served with the foregoing order, it appeared and filed a demurrer. The Plaintiff objected that the order of the Court required an answer and that the filing of the demurrer was not in compliance with the Order. The Chief Justice dismissed this objection in his opinion which is reported in 6 Pet. 323, 31 US 323, 8 L. Ed. 414, saying:

> "The demurrer, then, being admitted as containing an appearance by the State, the court is of opinion that it amounts to a compliance with the order of the last term. In that order the word 'answer' is not used in a technical sense, as an answer to the charges in the bill under oath; but an answer, in a more general sense, to the bill. A demurrer is an answer in law to the bill, though not in a technical sense, an answer according to the common language of practice."

In matters involving valuable properties and property rights, default judgments should be avoided and any doubt should be resolved against such procedure so that cases may be decided on their merits.

Tozer v. Charles A. Krause Mill Co., 189 F. 2d 242;

Henry v. Metropolitan Life Insurance Co., 3 F.R.D. 142.

III

NO DEFAULT SHOULD BE ENTERED

Rule 55 (a) of the Federal Rules of Civil Procedure provides for the entry of a default only where the Defendant has failed to plead or otherwise defend. The rule reads as follows:

> "(a) *Entry.* When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default."

It is apparent from the statement of the rule that an entry of default cannot be made so long as Defendant's motion to dismiss is pending.

Plaintiff's counsel suggests that the Defendant has had ample time to prepare its answer and infers that the only conclusion to be drawn from Defendant's failure to answer to the merits is an inference that the motion was filed for the purpose of delay. Government counsel states that this inference is "strongly supported by the insubstantiality of the grounds on

which the motion is made." In view of the authorities which have been cited in this brief, Defendant would be entitled to ignore these conclusions drawn by Plaintiff's counsel. However, we feel that the Court should be informed that the motion to dismiss was filed in good faith and not for any purpose of delay and is, we believe, based on very substantial grounds. It is difficult to believe that counsel have much faith in their conclusions on this subject. If the motion to dismiss is so unsubstantial, as suggested by Government counsel, it would not require 60 days for their response to the motion to dismiss.

The mere fact that this Court overruled a plea to the jurisdiction in *United States v. Louisiana*, 338 US 806, 94 L.Ed. 488 is no bar to the presentation of the motion to dismiss on jurisdictional grounds now. The present plea differs in a number of respects from that which was overruled by the Court in the original case, and additional reasons and additional authorities are cited in support thereof. The Court cannot read our original brief in support of the motion to dismiss and conclude that there are not substantial grounds for maintaining this motion. The mere fact that the Court has overruled a plea in one case is no reason why another plea on the same subject should not be entertained in another case. Although the Court does not frequently reverse itself, it has in recent years rendered a number of far-reaching decisions which have changed a jurisprudence that has been followed for

many decades of time. Those who have implicit faith in a principle of law certainly have a right to insist on that principle whenever occasion for it arises. Louisiana does not believe that this Court should exercise original jurisdiction in this case.

Plaintiff suggests that the State took occasion to oppose the Government's motion for leave to file the complaint in this case on several grounds but did not then assert jurisdictional grounds which it now urges. Answering this, we would call the Court's attention to Louisiana's opposition to the motion for leave to file the complaint. The very first paragraph of this opposition states that Louisiana does not waive "its right to object to the jurisdiction of this Court." It was our belief then and it is our opinion now that the motion to dismiss on jurisdictional grounds was properly filed after the Court had granted leave to file the complaint.

Government counsel states that "Louisiana appears to have no desire to develop the facts." This statement by plaintiff's counsel carries reverse English. Plaintiff has never desired to develop the facts in its controversy with Louisiana. The original tidelands case against Louisiana was decided on the pleadings alone, although Louisiana asked for a hearing to develop the facts. In the present proceeding the United States insisted in its brief in support of its motion for leave to file the complaint that the controversy "will not require the taking of any evidence." (Orig. Br.,

p. 15); and that "no helpful purpose would be served by having the case come before this Court on findings of fact made by a lower court." (Orig. Br., p. 17). Plaintiff accordingly suggests in its original brief that this Court determine certain questions of law, and that the questions of fact be made the subject of supplemental proceedings before a Special Master as in *United States v. California.* (Orig. Br., p. 17). The United States, therefore, seeks to go the long way around in a controversy which it now states should be decided without delay.

Again we call attention to our opposition to Plaintiff's motion for leave to file the complaint and brief in support thereof. In the brief in support of this opposition, Louisiana devoted some 30 pages to a statement of its claims to submerged lands in the Gulf of Mexico and urged that the taking of evidence was necessary and desirable not only to prove the width of the marginal belt claimed and owned by the State, but to demonstrate also the landward and seaward location of the lines which mark this belt. In the opposition and in the brief Louisiana urged that there were many questions of fact which could not be conveniently and fully presented in an original proceeding in this Court and that it would be a matter of great expense and inconvenience to the State to transport its witnesses and documentary evidence to Washington for a hearing of this cause. That opposition as well as the present motion have been filed and urged by the

State of Louisiana because we believe that a more complete development of facts can be made through a trial in a District Court and that the ends of justice can best be served thereby. It was for this reason that Louisiana filed its injunction suit in the Fourteenth Judicial District Court in the Parish of Calcasieu, referred to on Page 6 of the Plaintiff's brief. The State of Louisiana is most anxious to develop the facts and desires to proceed in a way whereby these facts can be fully developed.

CONCLUSION

For the foregoing reasons the motion for entry of default should be denied.

In any event the State of Louisiana, if it be required to answer on the merits, should be granted ample time within which to draft and print its answer and send it through the mails to the Clerk of this Court.

Respectfully submitted,

JACK P. F. GREMILLION,
Attorney General
State of Louisiana
W. SCOTT WILKINSON,
Special Assistant Attorney General
EDWARD M. CARMOUCHE,
Special Assistant Attorney General
JOHN L. MADDEN,
Special Assistant Attorney General
BAILEY WALSH,
Special Counsel

MORRIS WRIGHT
JAMES R. FULLER
MARC DUPUY, JR.
of Counsel

August, 1956.

PROOF OF SERVICE

I, ..., one of the attorneys for the State of Louisiana, defendant herein, and a member of the Bar of the Supreme Court of the United States, certify that on the ..... day of ....., 1956, I served copies of the foregoing Opposition to Plaintiff's Motion For Entry Of Default and For Leave to Proceed Ex Parte, And Supporting Brief, by leaving copies thereof at the offices of the Attorney General and of the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D. C.

.....

Office - Supreme Court, U.S.
FILED
SEP 26 1956
JOHN T. FEY, Clerk

IN THE

Supreme Court of The United States

OCTOBER TERM, 1955

No. 10 Original

UNITED STATES OF AMERICA, PLAINTIFF

versus

STATE OF LOUISIANA

Application by Anderson-Prichard Oil Corporation, Lessee of Both Parties, For Extraordinary Relief and For Amendment or Interpretation of Decree

JOSEPH V. FERGUSON II
902 Whitney Building
New Orleans, Louisiana
Attorney for Applicant

Of Counsel:
C. T. McCLURE
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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1955

No. 15 Original

UNITED STATES OF AMERICA, PLAINTIFF

versus

STATE OF LOUISIANA

Application to The Supreme Court of the United States For Extraordinary Relief and For Amendment or Interpretation of a Decree

---

Now, comes Anderson-Prichard Oil Corporation (hereinafter referred to as "Applicant") by its attorneys and respectfully represents:

1. Applicant is a corporation duly organized under the laws of the State of Delaware with its principal place of business in the City of Oklahoma City, Oklahoma and is engaged in the business of drilling for and producing oil and natural gas. Applicant is and has been unnecessarily, unduly and improperly prejudiced by an interpretation by the Secretary of the Interior of an order of this Court issued June 11, 1956, in this cause which said interpretation has caused Applicant to sustain substantial and irreparable

financial burdens accruing at the rate of $4,400 per day since the middle of July 1956 and jeopardizes the preservation of leasehold interests valued in the approximate sum of $4,500,000, all as will be set forth in more detail hereinafter.

2. By virtue of certain leases granted by the State of Louisiana and duly validated by the United States under the provisions of Section 6 of the Outer Continental Shelf Lands Act, Applicant is the lessee of certain areas amounting in full to about 8,875 acres, situated in the so-called disputed tidelands area off the coast of Louisiana. Said leases have been maintained and are now in force and effect as to both the State of Louisiana and the United States, as reflected by copies of said leases and subsequent actions with respect thereto, comprising Exhibits A and B, annexed hereto.

3. Notwithstanding the refusal of the United States to consent and approve Applicant's drilling on one of the leases upon which Applicant was prepared to drill as hereinafter set forth, the United States, when rentals due under such lease became payable, took the position that in order for Applicant to maintain such lease in force and effect without drilling, Applicant must pay the rentals which became due thereunder on July 17, 1956 and declined to comply with Applicant's request that rental payment be suspended during the period of time that the United States refused to consent and approve of drilling. In order to avoid any question with respect to maintaining said lease in force and effect as to the United States, Applicant paid the rentals which the United States maintained were necessary to keep said lease in force and effect.

4. The leases involved herein are all in the last year of their primary terms which, insofar as the State of Louisiana is concerned, will expire on December 27, 1956, and may be kept in force and effect after the expiration of the primary terms only by drilling on or production from the areas subject to said leases. In order to maintain said leases in force and effect by drilling, Applicant on or about April 13, 1956, entered into a contract with Deep Water Exploration Company under the terms of which Applicant agreed to provide the drilling contractor with a location upon which to commence drilling prior to July 15, 1956. By reason of the action of the United States hereinafter detailed Applicant has been unable to provide such drilling location and in consequence Applicant has been and is suffering the loss of standby charges provided in such contract at the rate of $4,400 per day, which charges will continue to accrue unless and until such drilling location is provided. In addition, as to the State of Louisiana and as hereinabove set forth, Applicant risks the loss of the aforesaid leases, which are valued in excess of $4,500,000 unless drilling operations are commenced on each lease on or before December 27, 1956.

5. Applicant represents that its aforesaid contractor is ready and willing to commence drilling and would commence drilling if the United States would grant permission therefor as it is required to do under the terms of its leases and applicable statutes and regulations. Application for such permission was made by Applicant to the Department of the Interior in proper form on June 12, 1956. Notwithstanding the obligation upon the United States to place its lessees in possession of the leased premises in so far as it may be within its power to do so, the United States has declined and refused to grant a permit for drilling and takes the position

through the Secretary of the Interior that it is forbidden to do so by virtue of the terms of the decree of this Court entered on June 11, 1960, which provided, among other things:

> "It is further ordered that the State of Louisiana and the United States are enjoined from leasing or beginning the drilling of new wells in the disputed tidelands area pending further order of this Court unless by agreement of the parties filed here."

6. In the disputed tidelands area the majority of leases are held by operators under a lease either from the United States or from the State of Louisiana, but not from both. Applicant believes and therefore avers that the decree of this Court is obviously designed to maintain a *status quo* between the leasing operations of the United States on the one hand and the State of Louisiana on the other hand in the disputed area pending determination of title thereto. Applicant believes that no explanation could have been made to the Court by the parties respecting the rights of persons such as Applicant which holds leases from both the disputing parties, and pays dual rents and, therefore, enjoys valid leaseholds regardless of which government may ultimately be found to be the owner of such premises. Nor could the decree of this Court have been designed to prevent persons situated as Applicant from engaging in drilling operations pursuant to leases granted by both disputing parties, since their drilling rights do not depend upon the outcome of this litigation. Nevertheless, by reason of the interpretation placed by the United States upon the decree of this Court Applicant is being denied permission to drill and is suffering grievous and irreparable damage in the form of penalties under the aforesaid contract and the possible

loss of the aforesaid leases and will continue to do so unless relief is granted.

7. Notwithstanding Applicant's belief that the Court's decree was not intended to affect Applicant in respect of dual leased premises, Applicant, to exhaust every possibility of administrative relief, has made every effort to obtain an agreement on the part of the United States and the State of Louisiana for the commencement of drilling operations by Applicant. The State of Louisiana has recognized its obligation to do what it can to place Applicant in possession of the leased premises and has consented to the commencement of drilling operations by Applicant by entering into an agreement with Applicant as evidenced by Exhibit B attached hereto. The agreement, represented by Exhibit B, was submitted to the Secretary of the Interior for execution pursuant to the authority conferred on him by Section 7 of the Outer Continental Shelf Lands Act, but on August 13, 1956, he finally refused to do so.

8. Applicant consulted with representatives of the Attorney General and was informed, among other things, that the Attorney General's position was basically the same as that of the Secretary of the Interior; that under no circumstances would the Attorney General consider anything other than an overall agreement; that the Attorney General was entitled to exercise independent judgment and in the exercise thereof would maintain his aforesaid position regardless of what the Secretary of the Interiors' position might become.

9, At no time has the Secretary of Interior or the Attorney General, or their representatives, raised any ques-

tions as to the form of the agreement set forth in Exhibit B. Applicant has been informed, however, by representatives of the Attorney General that although it was unnecessary to consider the form of the agreement in view of his position that no consideration would be given to anything other than an overall agreement, their failure to raise any objections as to the form of the agreement was not to be construed as approval thereof. It was suggested that the Attorney General might have some objections but at no time has Applicant been informed what such objections might be, if any.

10. While the Secretary of the Interior and the Attorney General have declined to grant a hearing to Applicant, Applicant believes that their position is as stated by their representatives, namely, that they will not sign such agreement because: (a) they do not desire a "piece-meal" settlement; and (b) they believe by signing such agreement they would discriminate in favor of Applicant over other oil companies.

11. Neither of such grounds has any force or validity. According to Applicant's information, the United States and the State of Louisiana have been endeavoring to negotiate an overall agreement within the terms of the Court's decree for a period in excess of three months; however, no agreement has been reached. Furthermore, the Applicant is informed and believes and therefore avers that the negotiations have included questions of validation by the State on the one hand of United States leases and by the United States on the other hand of State leases and leasing in the disputed area and do not affect situations such as that enjoyed by Applicant wherein the operator needs no validation of his leases because it holds leases from both disputing

parties. In any event, Applicant ought not to be required to suffer the leases attendant upon protracted negotiations, merely to satisfy the desire of the Secretary of the Interior and the Attorney General for an over-all settlement. As for the alleged discrimination, Applicant submits that it enjoys a distinct and separate situation in view of its dual lease position which warrants and demands that a distinction be made between Applicant and persons holding leases which must be validated by the successful party in this cause if such leases are to be maintained in force and effect.

12. By reason of the foregoing, Applicant believes and therefore represents that although the decree of this Court was not designed to prevent drilling operations by operators such as Applicant holding a dual lease position, nevertheless, Applicant is being prevented by the United States from drilling and will continue so unless relief is granted. Even if the parties ultimately reach an over-all agreement, the time element is such as to deny applicant relief as a practical matter.

13. Applicant has heretofore requested individual Justices of this Honorable Court for relief in the premises, having applied to Mr. Justice Black for relief on August 16, 1956 for a stay or interpretation of the aforesaid decree. The relief requested was denied by Justice Black. Thereafter, the application was submitted to Mr. Justice Frankfurter, who also declined to grant relief.

14. In a further effort to obtain relief Applicant brought an action in the United States District Court for the District of Columbia against the Secretary of Interior and the Attorney General, seeking a mandatory injunction to compel

the issuance of a drilling permit and alternatively, requiring such defendants to consider the agreement with the State of Louisiana (Exhibit B herein), or to state the terms and conditions upon which an agreement would be entered into with the State of Louisiana and Applicant so that Applicant might commence drilling. The motion for preliminary injunction was heard by the United States District Court for the District of Columbia on August 29, 1956 and denied. Thereupon Applicant immediately appealed to the Court of Appeals for the District of Columbia and on September 4, 1956 that Court affirmed the decision of the lower court, Judge Wilbur K. Miller dissenting.

15. Applicant has therefore exhausted all remedies which are available to it for relief and can only look to this Honorable Court to be relieved of the burden which Applicant has been unnecessarily, unduly and improperly required to assume.

16. Applicant may obtain relief from this Court if the Court, considering the equities of this case, will do any of the following:

A. Amend the decree issued herein on June 11, 1956 so that it will clearly disclose it does not apply and was not intended to apply to lessees holding a lease or leases granted by and maintained in force and effect as to both sovereigns and relating to the disputed tidelands area, or

B. Enter an order of interpretation to the effect that the filing of the leases and the documents disclosing subsequent action with respect thereto as reflected in Exhibit A, and the filing of Exhibit B represent in combination the

consent of the United States and the State of Louisiana for the commencement of drilling operations and constitute an agreement for drilling as provided for in the aforesaid decree of June 11, 1956, or

C. Order the United States to appear forthwith and show cause, if any they have, why they should not agree that Applicant be permitted to commence drilling pursuant to the aforesaid leases.

17. Granting relief in any of the forms requested will in no manner prejudice the legal rights of the parties to this cause. It will merely deny the United States an excuse for withholding what it has contracted to give Applicant and for which it has accepted and received substantial payments, specifically, possession of the leased premises and consent and approval for drilling.

WHEREFORE, Applicant respectfully prays:

1. That an order be issued herein amending the aforesaid decree of this Court of June 11, 1956, insofar as it may affect drilling operations by Applicant upon the aforesaid leased premises, and specifically permitting applicant, as the holder of leases from each of the contesting parties, to commence drilling on said leases; or in the alternative,

2. That a determination be made and an order of interpretation entered that the validation by the United States of the leases described in Exhibit A, said validation being also disclosed by Exhibit A, and the consent given by the State of Louisiana as evidenced by Exhibit B represent in combination the consent of the parties for commencement

of drilling operations for which provision was made in the Court's decree; or in the alternative

3. That an order be issued requiring the United States to appear forthwith and show cause, if any they have, why they should not agree that Applicant be permitted to commence drilling operations pursuant to the aforesaid leases.

4. Such other and further relief as may be appropriate.

5. That an oral hearing be granted Applicant in support of this application.

Respectfully submitted,

JOSEPH V. FERGUSON II
Joseph V. Ferguson II
902 Whitney Bldg.
New Orleans, Louisiana

Of Counsel:
C. T. McClure
Liberty Bank Bldg.
Oklahoma City, Okla.

STATE OF LOUISIANA
PARISH OF ORLEANS

Joseph V. Ferguson II, being first duly sworn according to law, on oath deposes and says that he has read the fore-

going application subscribed by him and verily believes the facts stated therein to be true.

JOSEPH V. FERGUSON II
Joseph V. Ferguson II

Subscribed and sworn to before me this 22nd day of September, 1956.

HERMAN M. BAZINSKY
Notary Public

(SEAL)

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1955

No. 15 Original

UNITED STATES OF AMERICA, PLAINTIFF

versus

STATE OF LOUISIANA

PROOF OF SERVICE

I, Joseph V. Ferguson II, one of the attorneys for Anderson-Prichard Oil Corporation, applicant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 24th day of September, 1956, I served copies of the attached Application for Extraordinary Relief and for Amendment or Interpretation of a Decree on the several parties in the above-entitled cause, as follows:

1. On the United States: (a) by mailing a copy thereof to the office of the Solicitor General, Department of Justice, Washington 25, D. C.; and (b) by telegraphic notice to the Solicitor General that the application was being filed on the aforesaid date.

2. On the State of Louisiana: (a) by mailing a copy thereof addressed to the office of Bailey Walsh, Esq., special counsel to the State of Louisiana, 1025 Connecticut Avenue, N.W., Washington, D. C.; and (b) by telegraphic notice to said Bailey Walsh, Esq. that the application was being filed on the aforesaid date.

JOSEPH V. FERGUSON II
Joseph V. Ferguson II
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Prichard Oil Corporation
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New Orleans 12, Louisiana

Office - Supreme Court, U.S.
FILED
SEP 28 1956
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 15 Original

UNITED STATES OF AMERICA, PLAINTIFF

versus

STATE OF LOUISIANA

Brief in Support of Application by Anderson - Prichard Oil Corporation, Lessee of Both Parties, For Extraordinary Relief and For Amendment or Interpretation of Decree

JOSEPH V. FERGUSON II
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New Orleans, Louisiana
Attorney for Applicant

Of Counsel:
C. T. McCLURE
Liberty Bank Bldg.
Oklahoma City, Oklahoma

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1955

No. 15 Original

UNITED STATES OF AMERICA, PLAINTIFF

versus

STATE OF LOUISIANA

MEMORANDUM BRIEF IN SUPPORT OF APPLICATION FOR EXTRAORDINARY RELIEF AND AMENDMENT OR INTERPRETATION OF DECREE

MAY IT PLEASE THE COURT:

This application is filed by reason of the effects upon Applicant of the Court's interlocutory decree entered in this cause on June 11, 1956 which are set out in some detail in the application. As grounds for the application we submit: (a) the Court's decree was not designed to affect Applicant, particularly since Applicant had no opportunity to be heard prior to its issuance, and neither of the contesting parties brought the dual lease situation to the Court's attention, (b) nevertheless, Applicant is suffering continuous and irreparable damage as a result thereof, and (c) it lies within the power of the Court in such circumstances to promptly grant the relief sought by Applicant.

STATEMENT OF THE CASE

The background of this application is substantially as follows. The controversy between the United States of America and the State of Louisiana relates to the ownership of said certain submerged lands situated off the coast of Louisiana. During pendency of this proceeding the United States offered for lease various tracts of land situated in the disputed tidelands area and in attempt to halt the said proposed leasing by the United States the State of Louisiana brought an action in its own courts enjoining such leasing and prohibiting operations on the area in dispute in instances where leases were held from the United States only, unless such operations were consented to by the State of Louisiana. Thereafter, the United States of America appeared in this proceeding and moved for an injunction to restrain the State of Louisiana from proceeding with the action in its State Court. In response to the motion of the United States this Honorable Court entered a decree on June 11, 1956 restraining the State from proceeding with its action and further enjoined the parties to the action from leasing or beginning the drilling of new wells in the disputed tidelands area pending orders of this Court unless by agreement of the parties filed with the Court.

In view of the fact that Applicant at the time the injunction was issued by the State Court was a lessee in good standing insofar as the State of Louisiana was concerned, Applicant was of the opinion that it had the consent of the State of Louisiana to commence operations on leases issued by the State embracing areas which are the subject of the dispute between the State of Louisiana and the United States here. As set forth in detail in the application and ex-

hibits attached Applicant's State leases have been validated by the United States under the provisions of the Outer Continental Shelf Lands Act (43 U.S.C.A. 1331 et seq.) and therefore Applicant is also a lessee of the United States.

It follows that since Applicant's operations under such leases were not the subject matter of the State Court proceedings, the motion of the United States which resulted in this Court's decree of June 11, 1956, was not directed at such leases. Applicant is not a party to this litigation, was not apprised of the fact that its leasehold rights were in jeopardy and hence, made no attempt to appear in this proceeding prior to the entry of said decree. We conclude, therefore, that this Court's decree was not intended to affect operations by Applicant under these leases. Nevertheless, Applicant has been effectively restrained thereby.

Both the State of Louisiana and the United States require that operators seeking to commence the drilling of wells on lands owned by or situated within their respective jurisdictions obtain permits and/or approval before drilling and as a result of their interpretation of the Court's order of June 11, 1956, declined to grant Applicant permits or approval for the beginning of any new wells in the disputed tidelands area. Applicant believes it was not intended to be bound by the provisions of the said order because of its dual lease position. However, it was nonetheless prevented from exercising the rights granted to it by its respective lessors by virtue of their refusal to issue the necessary drilling permits or grant the requisite approval on the grounds that issuance was prohibited by the order of June 11, 1956.

In the disputed tidelands area many leases were originally granted by the State of Louisiana, subsequently validated by the United States and thereafter were maintained in force and effect with respect to the United States alone; other leases were originally granted by the United States and there were no corresponding leases obtained from the State of Louisiana; Applicant's leases, however, were originally granted by the State, subsequently validated by the United States and thereafter maintained in effect with respect to both governments. In view of the fact that Applicant held a lease from both contestants, no difficulty in drilling and development was anticipated. In order to develop the leases, Applicant entered into a drilling contract with Deep Water Exploration Co. on April 13, 1956, which said contract requires Applicant to furnish a drill site on or before July 15, 1956 and provides for penalties in the sum of $4,400.00 per day. Deep Water Exploration Co. is and has been on the site of the intended drilling location since mid-July; however, Applicant has been unable to obtain the necessary permit or approval and has incurred and will continue to incur the penalties provided for in said contract, unless relief is granted.

After the entry of the court's decree two proposed stipulations were presented by representatives of various oil companies to the State of Louisiana and the United States of America, one covering the situation wherein leases were in force and effect insofar as the United States was concerned and one covering the dual lease situation. At the time these stipulations were presented in the middle of June, 1956, Applicant's representative was informed by the Department of the Interior that an overall agreement was desired by the Secretary but that, in the event such agreement could not

be effected within a reasonable time, consideration would be given to entering into a stipulation covering the dual lease position alone. Thereafter, a conference was held between representatives of the State of Louisiana and representatives of the United States in the beginning of July.

No agreement, however, was reached in that conference. When Applicant learned that no agreement had been reached between the State and the United States and that additional negotiations, possibly of protracted duration, would be required, Applicant determined that in order to protect its leasehold rights and mitigate the penalties about to accrue, under the provisions of its contract, with Deep Water Exploration Co., some independent action would be required. With this in mind Applicant requested the State of Louisiana to execute an agreement which would permit Applicant, insofar as the State was concerned, to drill. The State recognized its obligation to place Applicant in possession of the leased premises, and executed such agreement as is reflected by Exhibit B. Thereafter, Applicant contacted representatives of the Secretary of the Interior and informed them of the fact that an agreement had been executed by the State of Louisiana and requested an appointment for the purpose of submitting the agreement to the United States. Applicant was then informed that a meeting had been scheduled between the State and the United States on August 2, 1956 and it was suggested that such meeting might result in an overall agreement which would not require execution by the United States of the agreement reflected by Exhibit B. The meeting held between the State of Louisiana and the United States on August 2nd and 3rd resulted in an adjournment of the meeting without an agreement being concluded. On August 6, 1956, Applicant submitted the

agreement reflected by Exhibit B to representatives of the Department of Interior and, as set forth in the application, on August 13, 1956 was informed that the Secretary of the Interior would not execute the agreement.

Representatives of the Attorney General informed Applicant that the Attorney General's position was basically the same as that of the Secretary of the Interior and that the Attorney General was entitled to exercise independent judgment with respect to the agreement sought by Applicant and in the exercise thereof, declined to execute the agreement.

Applicant then sought relief from two of the Justices of this Court, requesting a stay or interpretation of the decree with respect to leases which had been maintained in force and effect as to both sovereigns; however, this relief was denied.

Thereafter, Applicant attempted to obtain a mandatory injunction from the United States District Court for the District of Columbia, seeking to compel the Secretary of Interior and the Attorney General to approve and consent to drilling on said leases or to state upon what grounds such consent and approval would be given to lessees holding a dual lease position. This relief was denied by the District Court and on appeal, the Circuit Court of Appeals affirmed the judgment of the District Court, Judge Wilbur K. Miller dissenting. (Anderson-Prichard Oil Corporation v. Fred A. Seaton, Secretary of the Interior and Herbert Brownell, Jr., Attorney General of the United States, No. 13,526, Court of Appeals, District of Columbia).

The views of Judge Miller expressing his reasons for dissent may be of interest to the Court and are hereinbelow set forth in part, as follows:

"The parties agreed on oral argument that Anderson - Prichard's unique position as a dual lessee, whose right to the lease does not depend on the outcome of the litigation between its two lessors, was not drawn to the Supreme Court's attention at the hearing which was followed by the injunctive order. I think it reasonable to conclude that the Court was dealing with a situation in which, unless enjoined, either government might execute new leases or might authorize or permit its own existing lessees, each dependent for title on the title of its lessor, to begin drilling. Obviously unnecessary confusion and complications would result from the commencement and completion of wells by contending lessees, so the Court prohibited such drilling pending its decision as to title, unless it were done by agreement between the State and the United States.

"I think we are free to construe the Supreme Court's decree in the light of the situation with which it dealt, and I see no reason to suppose the Court intended to cover a factual situation which was not presented to it. Since this dual lessee's title to a valid lease and its right to drill thereunder do not depend, as I have pointed out, on the ultimate decision in the Original Action as to which of its lessors have title, I cannot believe the injunctive decree was intended to prohibit it from

drilling pending that decision. If the Supreme Court did not so intend, then its decree does not have that effect.

"But, if the Supreme Court's second paragraph should be construed as prohibiting drilling by this dual lessee 'unless by agreement of the parties (Louisiana and the United States) filed here,' I suggest that those parties have in legal effect already agreed. Both governments agreed that Anderson Prichard might drill on the area involved when they executed leases to it. An oil lease is fundamental authority to drill. The federal drilling permit is concededly a mere formality, as I have said. So I think the parties have basically consented that this dual lessee may commence a well. The words 'filed here' in the order do not trouble me, for the appellant's two leases may be quickly tendered for filing in the Original Action if they are not already there.

"Either because, as I think, the Supreme Court did not enjoin drilling by a dual lessee such as this appellant, or, if I am wrong in that, because the lessors have consented to such drilling within the meaning of the injunctive order, I would reverse and direct the District Court to order the defendant officials to perform their admittedly ministerial duty of issuing a drilling permit."

For the convenience of the Court, the report of this case is reproduced in its entirety as Appendix A.

It thus appears that applicant has exhausted all possible means of administrative relief before turning to this Court to request the relief sought in the application.

Neither the United States nor the State of Louisiana can in any manner be prejudiced by the Court granting Applicant the relief sought, and as evidence thereof, the State of Louisiana has executed an agreement indicating its consent (Exhibit B). It may be reasonably concluded that this agreement would not have been signed by the State of Louisiana if it felt that its rights would be in any manner prejudiced by doing what it could to permit Applicant to drill.

No representatives of the United States have at any time indicated that the United States will be prejudiced in any manner by becoming a party to the agreement reflected by Exhibit B, the only reason given being that the United States preferred an overall settlement and that it might be a discrimination against other lessees of the United States. It follows that if these be the only objections (and Applicant's above statement is supported by weeks of negotiations and conferences as well as the stated position of the United States in the action against the Secretary of Interior and the Attorney General) to the agreement and taking into consideration the admission by the United States in the Court of Appeals that dual lease situation was not brought to the attention of the Court, there can be no sound reason for the United States objecting to the Court granting, in any of the suggested forms, the relief sought by Applicant.

AUTHORITY OF THE COURT TO GRANT THE RELIEF SOUGHT

There can be no question of the right of this Court to amend, modify or interpret decrees relating to injunctive or interlocutory relief as between the parties or upon the application of one affected thereby, though not a party to the action. *Regal Knitwear Co.* v. *National Labor Relations Board*, 324, U. S. 9, 89 Law Ed. 661; *State of New Jersey* v. *City of New York*, 296 U. S. 259, 80 Law Ed. 214.

In the case of *Regal Knitwear Co.* v. *National Labor Relations Board*, we find the Court saying:

> "If defendants enter upon transactions which raise doubts as to the applicability of the injunction, they may petition the court granting it for a modification or construction of the order. Cf. New Jersey v. New York, 296, U. S. 259, 80 L ed 214, 56 S Ct 188. While such relief would be in the sound discretion of the court, we think courts would not be apt to withhold a clarification in the light of a concrete situation that left parties or 'successors and assigns' in the dark as to their duty toward the court."

It is equally clear, that in situations such as the one presented by Applicant, there being no specific provision in Rule 9 covering this situation and that rule being subject to a broad interpretation, the Court is free to mold its procedure and process to fit the specific case, and if it sees fit to grant the relief sought to grant it promptly in any form

which will afford Applicant relief. As was said in the case of *Ex parte Kentucky* v. *Dennison*, 65 U. S. 726:

> "The cases referred to leave no question open to controversy, as to the jurisdiction of the Court. They show that it has been the established doctrine upon this subject ever since the Act of 1789, that in all cases where original jurisdiction is given by the Constitution, this court has authority to exercise it without any further Act of Congress to regulate its process or confer jurisdiction; *and that the court may regulate and mold the process it uses in such manner as in its judgment will best promote the purposes of justice.*" (Emphasis supplied.)

CONCLUSION

We submit, therefore, that there is ample authority for the Court to grant relief on any of the grounds sought and that if the Court should conclude that relief should be granted, then it is clearly within the power and authority of the Court to provide a prompt process and procedure for granting such relief. Considering both the legal and equitable rights of Applicant with respect to each of the parties to this litigation, it is submitted that the relief sought by Applicant should be granted. It may be that the relief of the nature sought by Applicant is without precedent in Original Actions; however, and as may be clearly seen from the foregoing, Applicant finds itself in a position without precedent, that is, a non-litigating party whose rights have become involved in a dispute between a State and the United States. It may be said that the relief sought by Applicant is un-

usual; however, as the Court well knows, extraordinary cases call for extraordinary remedies and relief.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify copies of the above and foregoing brief have been served upon the parties hereto as follows:

A. On the United States by this day mailing a copy thereof to the office of the Solicitor General, Department of Justice, Washington 25, D. C.

B. On the State of Louisiana by this day mailing a copy thereof addressed to the Office of Bailey Walsh, Esq., special counsel to the State of Louisiana, 1025 Connecticut Avenue, N.W., Washington, D. C.

Joseph V. Ferguson II

September 26, 1956.

APPENDIX A

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 13,526 April Term, 1956

Anderson-Prichard Oil Corporation,
a corporation,
Appellant,

v.

Fred A. Seaton, Secretary of the Interior

Herbert Brownell, Jr., Attorney General
of the United States,
Appellees.

Before: Edgerton, Chief Judge,
Wilbur K. Miller and Bazelon,
Circuit Judges.

ORDER

This case came on for consideration on appellant's motion for an immediate hearing on its appeal from an order denying the preliminary injunction and for a decree setting aside said order and remanding the case to the District Court with directions to issue the injunction as prayed for in the complaint, and said motion was argued by counsel.

Upon consideration whereof, it is ORDERED by the Court that the aforesaid appellant's motion be, and it is hereby, denied. *United States* v. *Louisiana*, 351 U. S. 978.

Per Curiam.

Dated: September 4, 1956.

Dissenting opinion by Circuit Judge Miller attached.

No. 13,526, *Anderson-Prichard Oil Corp.* v. *Seaton, et al.*

WILBUR K. MILLER, Circuit Judge dissenting: Louisiana claims title to the submerged lands off her coast between the three-mile and three-league limits, and has executed oil leases to a number of lessees covering various portions of the area. The United States also claims ownership and has also executed many oil leases to other lessees. Out of more than 150 leased areas, there are only two or three on which a single lessee holds leases from both Louisiana and the United States. The appellant is one of these very few, and is said to be the only one of them who has kept both leases alive by paying delay rentals to both lessors.

The United States filed an Original Action in the Supreme Court against Louisiana to quiet its title to the entire submerged area. The State filed suit in its own court to enjoin the federal lessees from drilling. In the Original Action, the Government sought an injunction against the prosecution of the state court suit or any similar action, pending the Supreme Court's disposition of the basic title question. This

relief was granted by the Court (351 U. S. 978), which added this paragraph to its order:

> "IT IS FURTHER ORDERED that the State of Louisiana and the United States of America are enjoined from leasing or beginning the drilling of new wells in the disputed tidelands area pending further order of this Court unless by agreement of the parties filed here."

In the spring of 1956 Anderson-Prichard contracted with a marine drilling company to commence a well in the area on which it held subsisting leases from both governments. The State and the United States were then in dispute over ownership, but the appellant felt secure. Since it held leases from both contenders, apparently it had a valid lease no matter how the question of title to the submerged lands might finally be determined. To be sure, a federal drilling permit had to be obtained, but no trouble on that score was anticipated as the issuance of a permit to a lessee is, the Government admits a formality which occurs practically automatically.

Solely because of the second paragraph of the Supreme Court's order in the Original Action quoted above, the Secretary of the Interior and the Attorney General of the United States refuse to issue a drilling permit to Anderson-Prichard. Their counsel conceded on oral argument that, but for what they regard as the Supreme Court's prohibition against doing so, a drilling permit would be promptly issued; they said its issuance is a mere ministerial act.

In the meantime, the drilling contractor had moved or was about to move on location. I am not sure which, as I necessarily write hurriedly; but it is certain that the contractor is in a position where Anderson-Prichard is obliged to pay him standby charges in the sum of $4,400.00 per day. Moreover, the appellant's lease from Louisiana will expire by its terms December 27, 1956, if a well is not commenced by that time; in that event, Anderson-Prichard will lose its present favorable position as a "dual lessee," and will have no lease if title should be won by the State.

In these circumstances the dual lessee asked an associate justice of the Supreme Court (the Court being in recess) to modify or clarify the second paragraph of the Court's order. This was denied without opinion, but probably because the justice did not feel justified in modifying an order entered by the whole Court. A similar motion was presented to a second justice, who declined to disturb the action of his senior.

Anderson-Prichard then filed the present suit in the United States District Court for the District of Columbia, asking that the defendant officials be required to issue a drilling permit. That court thought itself bound by the Supreme Court's second paragraph and denied a motion for preliminary injunctive relief. Its order is here for review. My brothers think, as did the district judge, that the second paragraph governs the question here, and so affirm his holding. I dissent.

The parties agreed on oral argument that Anderson-Prichard's unique position as a dual lessee, whose right to the lease does not depend on the outcome of the litigation

between its two lessors, was not drawn to the Supreme Court's attention at the hearing which was followed by the injunctive order. I think it reasonable to conclude that the Court was dealing with a situation in which, unless enjoined, either government might execute new leases or might authorize or permit its own existing lessees, each dependent for title on the title of its lessor, to begin drilling. Obviously unnecessary confusion and complications would result from the commencement and completion of wells by contending lessees, so the Court prohibited such drilling pending its decision as to title, unless it were done by agreement between the State and the United States.

I think we are free to construe the Supreme Court's decree in the light of the situation with which it dealt, and I see no reason to suppose the Court intended to cover a factual situation which was not presented to it. Since this dual lessee's title to a valid lease and its right to drill thereunder do not depend, as I have pointed out, on the ultimate decision in the Original Action as to which of its lessors have title, I cannot believe the injunctive decree was intended to prohibit it from drilling pending that decision. If the Supreme Court did not so intend, then its decree does not have that effect.

But, if the Supreme Court's second paragraph should be construed as prohibiting drilling by this dual lessee "unless by agreement of the parties (Louisiana and the United States) filed here," I suggest that those parties have in legal effect already agreed. Both governments agreed that Anderson-Prichard might drill on the area involved when they executed leases to it. An oil lease is fundamental authority to drill. The federal drilling permit is concededly

a mere formality, as I have said. So I think the parties have basically consented that this dual lessee may commence a well. The words "filed here" in the order do not trouble me, for the appellant's two leases may be quickly tendered for filing in the Original Action if they are not already there.

Either because, as I think, the Supreme Court did not enjoin drilling by a dual lessee such as this appellant, or, if I am wrong in that, because the lessors have consented to such drilling within the meaning of the injunctive order, I would reverse and direct the District Court to order the defendant officials to perform thei admittedly ministerial duty of issuing a drilling permit. The order could require that the maximum royalty accruing from oil produced be deposited in the registry of the District Court pending the Supreme Court's decision as to which lessor is entitled to collect it. This would adequately safeguard the only possible interest that Louisiana and the United States have in the matter, and I do not see why either should object to such a provision in the order. Upon objection, however, I think it should be omitted, in which event the lessee would be required to pay royalties under both leases with the hope of ultimately recovering from the payee which loses the title contest in the Supreme Court. The lessee might prefer to make burdensome double royalty payments in order to avoid losing a lease said to be worth $4,500,000. The relief I suggest is not that expressly prayed for in the complaint, but I think it is within the prayer for general relief.

One more thing. The appellees say this is a suit against the United States to which it has not consented. This argument is not the "last refuge" of a Government lawyer; it is

usually his first. But in my view it is not valid here. We are considering a lessee's right to drill under a lease which the United States has already granted. The defendant officials simply refuse to implement that lease by performing a confessedly ministerial act. And they refuse only on the basis of what I think is the mistaken notion that the Supreme Court has told them not to perform it.

Office - Supreme Court, U.S.
FILED
OCT 16 1956
JOHN T. FEY, Clerk

No. 11 Original

In the Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

MOTION TO DISMISS AS MOOT APPLICATION OF ANDERSON-PRICHARD OIL CORPORATION FOR EXTRAORDINARY RELIEF AND FOR AMENDMENT OR INTERPRETATION OF DECREE AND MEMORANDUM IN SUPPORT OF MOTION

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D. C.

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 11, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

MOTION TO DISMISS AS MOOT THE APPLICATION OF THE ANDERSON-PRICHARD OIL CORPORATION FOR EXTRAORDINARY RELIEF AND FOR AMENDMENT OR INTERPRETATION OF DECREE

The United States moves the Court to dismiss the application of the Anderson-Prichard Oil Corporation for extraordinary relief and for amendment or interpretation of decree. This motion is made upon the ground that the question presented by the application has become moot.

Respectfully,

J. LEE RANKIN,
Solicitor General.

OCTOBER 1956.

405270—56

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 11, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AS MOOT THE APPLICATION OF THE ANDERSON-PRICHARD OIL CORPORATION FOR EXTRAORDINARY RELIEF AND FOR AMENDMENT OR INTERPRETATION OF DECREE

On June 11, 1956, this Court entered an order enjoining the United States and the State of Louisiana from leasing or beginning the drilling of new wells in the disputed area pending further order of the Court, except by agreement of the parties filed with the Court. 351 U. S. 978. The Anderson-Prichard Oil Corporation, holding leases that are recognized by both parties, secured the agreement of the State of Louisiana that it might begin drilling a new well thereon. By its present application it asks the Court to amend or construe the order of June 11, 1956, so as to permit the applicant to begin drilling a new well, or to require the United States to join in the State's consent to such drilling.

On October 12, 1956, the United States and the State of Louisiana entered into a general agreement providing for new leasing and drilling in the disputed area, and filed it with the Court. That agreement permits new drilling by lessees who bring themselves within its terms. The Anderson-Prichard Oil Corporation has filed with the United States Oil and Gas Supervisor, Geological Survey, in New Orleans, Louisiana, and with the Secretary of the State Mineral Board, State Capitol, Baton Rouge, Louisiana, the documents necessary to bring itself within the terms of the agreement as provided by paragraph 5 (b) thereof. On October 15, 1956, the United States accordingly gave its approval, as sought by the applicant, to the drilling of the proposed well. The applicant having thus secured the permission to drill which it sought, the application has become moot and should be dismissed.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

OCTOBER 1956.

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Office Supreme Court
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NOV 5 1956
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 14 Original

UNITED STATES OF AMERICA,
Plaintiff

v.

STATE OF LOUISIANA

ANSWER OF THE STATE OF LOUISIANA

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OF COUNSEL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 11 Original

UNITED STATES OF AMERICA,
Plaintiff

v.

STATE OF LOUISIANA

ANSWER OF THE STATE OF LOUISIANA

Now comes the State of Louisiana, defendant herein, through its Attorney General and other designated counsel, and reserving all rights under its objections to the filing of the complaint herein, and its motion to dismiss on jurisdictional grounds; and without in any manner consenting to be sued, or submitting itself voluntarily to the jurisdiction of this Court, answers said complaint as follows:

FIRST DEFENSE

Defendant denies each and every allegation of the complaint except as may be hereinafter admitted:

I

It is admitted that Plaintiff seeks to invoke the jurisdiction of this Court as alleged in paragraph I of the complaint, but Louisiana shows that its boundaries in the Gulf of Mexico, extending to the edge of the Continental Shelf, have already been recognized and established by the political branches of the United States Government as will be hereinafter shown.

II

The allegations of paragraph II are denied, and defendant avers that the United States has never had dominion and power over the lands, minerals and other things underlying the Gulf of Mexico, nor has it ever had any right, title to, interest in, or possession of the same, except to hold it in trust, as a part of the Louisiana Territory, for the State of Louisiana to be thereafter formed and admitted to the Union, as required by the Treaty of Paris of April 30, 1803 (8 Stat. 200). Defendant further avers that the United States has no proprietary jurisdiction over the submerged lands and that the only dominion and control over the waters of the Gulf of Mexico possessed by the federal government relate to the regulation and control of the use of the same for purposes of interstate and foreign commerce, navigation, and the national defense, which powers the State of Louisiana has never questioned. Further answering, the State of Louisiana shows that it has the full fee simple title to and ownership of the

lands, minerals and other things underlying the Gulf of Mexico, extending seaward from its coast, as hereinafter shown.

III

It is admitted that a decree was entered on December 11, 1950, in the case of United States v. Louisiana, 340 U.S. 399, by this Court, which decree speaks for itself, but defendant shows that the theory upon which the opinion and decree of the Court was based, and the effect of said decree have been nullified and superseded by the provisions of Public Law 31 of the 83rd Congress, known as the Submerged Lands Act, enacted May 22, 1953, (67 Stat. 29, 43 U.S.C. 1301 et seq) and by the provisions of the Outer Continental Shelf Lands Act (67 Stat. 462, 43 U.S.C. 1311). The first named act disclaims on the part of the United States any title or right in said submerged lands and the resources thereof, and the second act referred to asserts the extent of the territorial boundaries of the United States as including the Outer Continental Shelf. The fact that said decree has been so nullified, and that the States must be held to have always had title to submerged lands and resources have been judicially recognized.

Superior Oil Co. v. Fontenot, 213 F. 2d 565, 569 Cert. Den. 348 U.S. 837, 99 L.Ed. 660.

Further answering, defendant shows that the Outer Continental Shelf Lands Act only required

lessees claiming leases from the State to make payment to the Secretary of Interior of royalties, rentals and other payments which might be claimed by the United States from lands leased by the State subsequent to June 5, 1950 and neither of the Acts of Congress referred to in this paragraph requires that any payment of any kind whatsoever be made by the State to the Federal Government.

IV

Paragraph IV of the complaint is denied as written, and the defendant avers that in the Submerged Lands Act Congress recognized the fact that the United States had no right, title or interest in the lands, minerals and other things underlying the Gulf of Mexico, and in Section 3 of said Act (67 Stat. 30, 43 U.S.C. 1311) released and relinquished "all right, title and interest of the United States, *if any it has*, in and to said lands, improvements, and natural resources."

The legislative history of the Submerged Lands Act and the reports of the Committees of Congress relating thereto specifically state that throughout the history of this Nation the respective States have been recognized and acknowledged to be the sovereign owners of the land beneath navigable waters within their boundaries, including the marginal seas, and of the natural resources within such lands and waters. See House Report No. 215, 83rd Congress, 1st Sess. p. 33 et seq. and Senate Report No. 133 p. 21, 54-60. (U.S.

Congressional & Administrative News, 83rd Congress, 1st Sess. 1953, Vol. 2, pp 1398-9, 1409-10, 1417, 1419, 1428-30, 1481, 1507-8, 1517-19)

To the extent that the said Submerged Lands Act and Outer Continental Shelf Lands Act may be construed to limit and restrict the right of Louisiana to extend its boundaries or title to the subsoil and minerals in the Gulf of Mexico seaward to the edge of the Continental Shelf and to the extent that the Outer Continental Shelf Lands Act purports to convey, or to assert or recognize, any property, right or title in the said subsoil or minerals in or to the United States, defendant shows that said acts are unconstitutional, null and void, if so construed, for the following reasons:

a. To the extent that said acts permit the federal government to exercise proprietary rights in said submerged lands and resources, they are violative of the Treaty of Paris entered into by the United States with France on April 30, 1803 for the cession of Louisiana to the United States, whereby the latter obligated itself to incorporate the purchased territory of Louisiana into the Union according to the principles of the federal constitution, and to maintain the inhabitants of Louisiana in their property in the territory with all its rights and appurtenances in the same manner as they had been acquired by the French Republic, and to the same extent as when this territory was in the hands of Spain, and that it had when France possessed it.

(8 Stat. 200). Congress was bound by the Treaty of Paris to hold the Louisiana Territory in trust for the states to be formed from it, and could not, and did not attempt to retain any federal domain southward from Louisiana in the Gulf of Mexico when it established the State of Louisiana in 1812. The declarations of the executive in 1945, and of the Congress in 1953, that the southern boundary of the United States extended further seaward than it had been previously recognized could not legally create a new and separate federal domain, or deprive Louisiana of its sovereign rights and claims to the Continental Shelf which is a part of the land mass of the Coastal State.

b. Said acts, to the extent that they may recognize federal ownership of said lands and resources, are violative of Article IV Section 3 and 4 of the United States Constitution. To such extent, said acts would unlawfully permit the federal government to exercise the prerogatives of the crown in a monarchial form of government, would permit it to invade property and property rights guaranteed to the State of Louisiana, and would unlawfully change and restrict the title and boundaries of the State without its consent.

c. Insofar as said acts confer or recognize title and property rights in the United States and limit or restrict the boundaries or the title of Louisiana in said submerged lands and mineral resources of the Continental Shelf, they exceed and go beyond the powers of the federal government enumerated in the United

States Constitution and are therefore in conflict with the Ninth Amendment thereto.

d. Said acts insofar as they attempt to grant to the United States title and ownership of the subsoil and mineral resources of the Continental Shelf violate the Tenth Amendment of the United States Constitution which reserves to the States all powers and rights not specifically granted to the United States. Louisiana has not relinquished to the federal government any title to, or ownership or right of possession of the seabed, subsoil and mineral resources of the Continental Shelf within its boundaries.

V

Paragraph V is denied, both as to the allegations of facts and the conclusions of law, and defendant avers that its southern boundary is, and by necessity has always been, coextensive with the southern boundary of the United States acquired by it in the Treaty of Paris on April 30, 1803.

VI

Paragraph VI is denied in its entirety and defendant avers that the United States is not entitled to possession, dominion or proprietary power over the lands, minerals and other things underlying the Gulf of Mexico, lying more than three miles seaward from the ordinary low-water mark and the outer limits of inland waters, and is not entitled to any accounting what-

ever from the State of Louisiana by virtue of the decree of this Court described in this paragraph.

VII

Louisiana admits the first subparagraph of paragraph VII, and admits that the Secretary of the Interior has issued leases on submerged tracts of land belonging to the State of Louisiana, and that defendant will continue to assert its title thereto, but in all other respects the allegations of the second subparagraph of paragraph VII of the complaint are denied. Defendant avers that the Secretary of the Interior, his officers and agents in leasing the lands referred to in his paragraph have trespassed upon and slandered the title of the State of Louisiana to submerged lands within the historic boundaries of Louisiana. Said leases were made over the protest of the State of Louisiana and with full knowledge of its claim and title thereto. In making said leases said officials and agents of the Department of the Interior acted without statutory authority and in violation of positive enactments of the United States Congress.

Defendant further shows that the United States, its officers, agents, and lessees have unlawfully produced and transported oil, gas and other minerals from said properties belonging to Louisiana, and the plaintiff has received money and other considerations from its said lessees in the form of cash bonuses, rentals, and royalties for all of which it should make an accounting to the State of Louisiana.

VIII

No paragraph VIII appears in the complaint. However, in further answer to the preceding paragraphs thereof, Louisiana affirmatively shows:

a. The extent of the territorial jurisdiction of Louisiana over the Gulf of Mexico is that of an independent nation subject only to the powers expressly granted to the United States, and the boundaries of the United States are co-extensive with the boundaries of the separate sovereign States. The Federal Government accordingly has no right or power to deprive Louisiana or any other State of the benefit of an extension of national sovereignty into territory contiguous to, or appertaining to any border or coastal state.

Harcourt v. Gaillard, 12 Wheat 523, 6 L.Ed. 716,

Commonwealth of Mass. v. Manchester, 152 Mass. 230, 25 N.E. 113, 116 (1890), Affirmed 139 U.S. 240, 35 L.Ed. 167,

Dred Scott v. Sanford, 19 How. 393, 446-9, 15 L.Ed. 691, 718-719,

Brown v. Grant, 116 U.S. 207, 212, 29 L.Ed. 598, Legislative History of the Submerged Lands Act Senate Report No. 133, p. 59-60 (83rd Cong. 1st Sess.)

b. Presidential Proclamation No. 2667 (10 FR 12303) issued by the President of the United States on September 28, 1945 and the Submerged Lands Act of

May 22, 1953 (43 U.S.C. 1301 et seq.) and the Outer Continental Shelf Lands Act of August 7, 1953 (43 USC 1311 et seq.), asse t jurisdiction over, and title to, the subsoil and the seabed and natural resources of the entire Continental Shelf which is an extension of the land mass of the Coastal States.

c. No foreign nation has questioned or disputed the acts of the United States asserting jurisdiction over the subsoil, seabed, and the natural resources of, on, and under the Continental Shelf, but on the contrary similar claims to the Continental Shelf have been, and are now being made by all of the Central and South American Nations. To the extent that the said Acts of the United States assert ownership or title to the subsoil, seabed, and natural resources in the federal government and seek to divest the coastal states of their title and right of possession thereof, and to the extent that they limit or restrict the right of the State of Louisiana to extend its boundaries to the edge of the Continental Shelf in the Gulf of Mexico, said acts are unconstitutional, null and .oid for the reasons set forth in the preceding and succeeding paragraphs of this answer.

d. By Act 55 of 1938 the Legislature of Louisiana declared the boundaries of the State to be 27 miles seaward of its shore line which boundaries were then considered to be co-extensive with those of the United States under International Law, and by Act 33 of 1954 the State redefined its boundaries generally further

seaward, and three leagues beyond the line of demarcation between its inland waters and the open sea, as fixed by the United States pursuant to an Act of Congress of February 10, 1807 and of February 19, 1895 (28 Stat. 672, 33 U.S.C. 151), the said boundary defined in Louisiana Act 33 of 1954 including a large portion of the Continental Shelf. The said Acts of Louisiana establishing and redefining its boundaries as aforesaid are in accord with accepted principles of International Law and the policies of the United States set forth hereinabove, and in any event are in accord with such principles and policies insofar as they relate to the subsoil, seabed, and the natural resources underlying the Gulf of Mexico. In this connection this Court in *United States v. Louisiana*, 339 US 699, 70 S. Ct. 914, 94 L.Ed. 1216, stated that "Louisiana's enlargement of her boundary emphasizes the strength of the claim of the United States to this part of the ocean and the resources of the soil under that area, including oil." This is a correct statement to the extent that it recognizes the right of coastal states thus to assert their boundaries as a matter of International Law, and to the extent that it recognizes the right of the United States to extend its appropriate national jurisdiction and the enumerated powers conferred on it in the United States Constitution to the full limit of the boundaries of the several states of the union. The Court's said statement emphasizes that the boundaries of the United States and of Louisiana must be co-extensive.

IX

The allegations of paragraph IX are denied. Louisiana denies that there is any need for a settlement of plaintiff's claims in this Court, and further denies that the fundamental question in issue involves inquiry into and application of the foreign policy of the United States in a matter of peculiar importance and delicacy which is appropriately a subject for original adjudication by this Court. While the establishment of the outer boundaries of the United States is a political matter which might involve foreign policy, the said boundaries have already been established by the political branches of the government, as hereinabove shown. There is, therefore, no matter of foreign policy now involved, but only a dispute as to property rights between the United States and one of its sovereign states. This is clearly stated in Section 3 (b) of the Outer Continental Shelf Lands Act which specifically declares that the rights asserted in the Continental Shelf adjoining the Coastal States shall not prejudice the character of the coastal waters as high seas, or the rights of navigation and fishing therein by other nations. The Federal Government, accordingly, owes no greater duty to, and has no greater jurisdiction over the undersea area involved here than it does to the uplands, the tidelands, or the beds of the rivers and inland waters.

House Report No. 215, p. 38, 83rd Cong. 1st Sess.
Alabama v. Texas, 347 U.S. 276, 98 L.Ed. 695.

Louisiana has exercised jurisdiction and acts of ownership over said submerged lands since its admission into the Union, and has claimed and exercised exclusive rights thereto which have never been disputed by any foreign power, or by any officer, agent, or representative of the United States prior to the year 1949 when the present dispute began, as will be more fully shown on the trial of this cause.

SECOND DEFENSE.

In the event that Louisiana's first defense be not sustained, then pleading in the alternative, Louisiana shows:

1. By virtue of the Treaty of Paris dated April 4, 1803, whereby the Louisiana Territory was ceded by France to United States its seaward boundary in the Gulf of Mexico extends to the 27th parallel of latitude, and the obligations of said Treaty require the United States to recognize said boundary. The said Treaty of Cession specifically required the United States to incorporate Louisiana into the Union according to the principles of the Federal Constitution, and to maintain its inhabitants in their property in the territory with all its rights and appurtenances in the same manner as they had been acquired by the French Republic, and to the extent that it had when this territory was in the hands of Spain, and that it had when France possessed it. French title to and possession of the Louisiana territory had its origin and was based upon the dis-

covery and proclamation of LaSalle on April 9, 1682, and by the said proclamation LaSalle took possession of Louisiana in the name of Louis XIV, King of France, declaring:

> "I, in virtue of the Commission of His Majesty which I hold in my hand . . . have taken, and do now take, in the name of His Majesty and of his successors to the Crown, possession of this country of Louisiana, the seas, harbors, ports, bays, adjacent straits . . . from the mouth of the great River . . . Mississippi . . . from its source . . . as far as its mouth in the sea, or Gulf of Mexico, about the 27th degree of the elevation of the North Pole and also to the Mouth of the River of Palms."

The claim thus made by France to the 27th parallel of latitude was not questioned by any nation during the period between 1682 when France possessed the Louisiana Territory and November 3, 1762, when France ceded this territory to Spain. Spanish title and possession of the full limits of the territory and its adjacent submerged lands and territorial waters was not disputed or questioned during this period, and in 1790 it was specifically recognized by Great Britian which at that time, together with Spain, owned and possessed the entire North American continent, with the exception of the thirteen colonies that gained their independence in 1783. This recognition of Spanish possession and ownership was expressed in the Treaty of Madrid between England and Spain signed at the Escurial on October 28, 1790 whereby both countries agreed to boundaries, both in North and

South America, extending ten leagues seaward into the Pacific Ocean and the South Seas, which latter seas included the Gulf of Mexico.

2. Pursuant to its obligation to incorporate the territory of Louisiana into the Union of States, the Congress of the United States set apart all of that portion of the Louisiana Purchase lying south of the 33rd degree of north latitude into the territory of Orleans (Act of March 26, 1804, 8th Cong., 1st Sess.). The said territory of Orleans which afterward became the State of Louisiana included all of the Louisiana territory south of the 33rd degree of north latitude without exception, and without excepting or reserving to the United States any title or ownership of the seas, bays, territorial waters and submerged lands possessed by France and Spain, and ceded to the United States in trust for the State to be formed out of the purchased and ceded territory. Likewise, the Act for the admission of Louisiana as a State into the Union did not except such territorial waters and submerged lands from the limits of the State of Louisiana (Act of April 8, 1812, 2 Stat. 70), but impliedly included the same. It is the settled jurisprudence of this Court that ownership of submerged lands in the sea is an attribute of sovereignty and if such lands are to be reserved from the territory of a newly admitted state by the transfer of sovereignty, the design to make this important change in this particular territory must be clearly indicated by appropriate terms, and must not be left for inference.

Martin v. Waddell, 16 Pet. 367, 413-416, 10 L. Ed. 997, 1014-15.

Alaska Pacific Fisheries v. U.S., 248 U.S. 78, 87-8, 39 S. Ct. 40, 63 L. Ed. 138, 140, 141.

3. Defendant shows that the Act of Congress admitting Louisiana to the Union described its limits as extending "to the Gulf of Mexico, thence bounded by the said Gulf to the place of beginning, including all islands within three leagues of the coast." If said Act of Admission be construed as describing the southern boundary of the State as a land boundary along the shore line of the Gulf, then in accordance with the established jurisprudence of this and other Courts, ownership of the submerged lands offshore in the Gulf of Mexico was necessarily implied and included in said description, in the absence of express provisions to the contrary.

Martin v. Waddell, 16 Pet. 367, 410, 416;

Van Brocklin v. Anderson, 117 U.S. 151, 168, 29 L. Ed. 845, 851;

Brown v. Grant, 116 U.S. 207, 212, 29 L. Ed. 598, 600;

Thurlow v. Mass., 5 How. 504, 12 L. Ed. 256;

Henderson v. Poindexter, 12 Wheat 530, 6 L. Ed. 718;

Rhode Island v. Mass., 12 Pet. 657, 9 L. Ed. 1233;

Shively v. Bowlby, 152 U.S. 1, 57, 58, 38 L. Ed. 331, 352.

It should therefore follow that Louisiana's seaward boundary by the Act of Admission extended to the full limit of the Louisiana purchase into the Gulf of Mexico to the 27th parallel of latitude, as claimed and possessed by France, and as provided by the Treaty of Cession in 1803.

THIRD DEFENSE

In the event that the Court should hold that the Federal Government owns a belt of land surrounding the territory of the coastal states wherein the States own no proprietary rights, and refuses to sustain Louisiana's claims hereinabove set forth, then pleading in the alternative, Louisiana shows:

1. In the event that the defenses set forth hereinabove in this and in the preceding paragraphs of this Answer are not sustained, then Louisiana shows in the alternative that its seaward boundaries extend at least three marine leagues from its coast into the Gulf of Mexico. In this connection Louisiana shows that its southern boundary has been adjudged by this Court to be a water boundary in the open sea, that its limits extend at least three marine leagues seaward from its coast line (*Louisiana v. Mississippi*, 202 U.S. 1, 50 L. Ed. 913) and said limits are drawn on the diagrams which are made a part of the Court's decision in that case.

2. Louisiana's boundaries extend to a line three leagues seaward of the line of demarcation between its inland waters and the open sea, as alleged in paragraph VIII of the First Defense hereinabove, and has lawfully established and redefined its boundaries thereto. Such determination of its said boundaries is not only justified for the reasons set forth in paragraph VIII but is also supported by the following facts:

3. By an Act of Congress of February 10, 1807, approved by Thos. Jefferson as President of the United States, authority was granted to the President of the United States for surveying the *coasts* of the United States within *20 leagues of any part of the shores of the United States.* In 1895 this authority was vested in the Secretary of the Treasury, when, by Act of Congress of February 19, 1895, c. 102, Section 2, 28 Stat. 672 (33 USC 151), the Secretary of the Treasury was authorized and directed to designate and define by suitable bearings or ranges with lighthouses, light vessels, buoys, and coast objects, the lines dividing the high seas from rivers, harbors, and inland waters.

By Section 4 of the Act of Congress of February 14, 1903, and Section 1 of the Act of Congress of March 4, 1913, this authority was vested in the Secretary of Commerce. By 1946 Reorganization Plan No. 3, Section 101, 104, effective July 16, 1946 (11 F. R. 7875), 60 Stat. 1097, the authority to establish, designate and define the coast line of the United States

under said Acts of Congress was vested in the Commandant of the Coast Guard.

Pursuant to the aforesaid Acts of Congress the line dividing Louisiana's inland waters from the high sea, or Gulf of Mexico, was designated and defined as shown by a map upon which the Commandant of the Coast Guard officially indicated said coast line in broken lines extending from the entrance to Mobile Bay to the Rio Grande River, including the entire coast line of the State of Louisiana.

4. Said coast line of Louisiana is designated and defined in CG-169, March 1, 1955, pp. 55-6 and 58, Sections 82.1 and 82.103. This action has definitive result for all times material to any issues involved in this case.

Section 82.95 designates and defines the coast line or outer boundary of the inland waters from Mobile, Ala. to Mississippi Passes, La., as follows:

> "Starting from a point which is located 1 mile, 90° true, from Mobile Point Lighthouse, a line drawn to Mobile Entrance Lighted Whistle Buoy 1; thence to Ship Island Lighthouse; thence to Chandeleur Lighthouse; thence in a curved line following the general trend of the seaward, high-water shore lines of the Chandeleur Islands to the southwesternmost extremity of Errol Shoal (Lat. 29°35.8′ N., Long. 89°00.8′ W.); thence to Pass a Loutre Lighted Whistle Buoy 4."

Section 82.103 designates and defines the coast line or outer boundary of inland waters from Mississippi Passes, La. to Sabine Pass, Tex., as follows:

> "A line drawn from Pass a Loutre Lighted Whistle Buoy 4 to South Pass Lighted Whistle Buoy 2; thence to Southwest Pass Entrance Midchannel lighted Whistle Buoy; thence to Ship Shoal Lighthouse; thence to Calcasieu Pass Lighted Whistle Buoy 1; thence to Sabine Pass Lighted Whistle Buoy 1."

5. The said coast line, or outer boundary of the inland waters of the State of Louisiana is also officially shown at the same locations as designated and defined by the agencies of the federal government authorized by the aforesaid Acts of Congress on U. S. Coast and Geodetic Charts Nos. 1270 and 1272 to 1279, both inclusive.

6. The Legislature of the State of Louisiana passed Act No. 33 of 1954 redefining its historic gulfward boundary by accepting and approving its coast line as designated and defined in accordance with applicable Acts of Congress, referred to in paragraph 2 above, and by stating that the Act of Congress of April 8, 1812, which admitted Louisiana as a State in the Union, defined and fixed its boundary at three leagues from coast into the Gulf of Mexico.

7. Certain portions of said coast line and certain bearings and markers delineating the same have been

specifically recognized by this Court as parts of the coast line of the State of Louisiana.

Louisiana v. Mississippi, 202 U.S. 1, 50 L. Ed. 913.

The Josephine, 3 Wall. (70 U.S.) 83, 18 L. Ed. 5.

FOURTH DEFENSE

Further pleading in the alternative, Louisiana avers that its boundaries extend at least three marine leagues seaward into the Gulf of Mexico for the following reasons:

1. At the time of its admission into the Union in 1812 all nations possessing territories in the Western Hemisphere agreed by treaties and otherwise that the ownership of submerged lands and territorial waters by the coastal states extended seaward at least three marine leagues and all such claims were acquiesced in by the other maritime nations of the world and by the United States as will be more fully shown on the trial hereof.

2. The United States has at all times agreed upon and recognized the fact that States and nations bordering on the Gulf of Mexico own the marginal seas and the sub-soil thereof to a distance of at least three leagues from their shores, and has never asserted that State ownership consists of any lesser width or extent in such submerged lands and the waters above them.